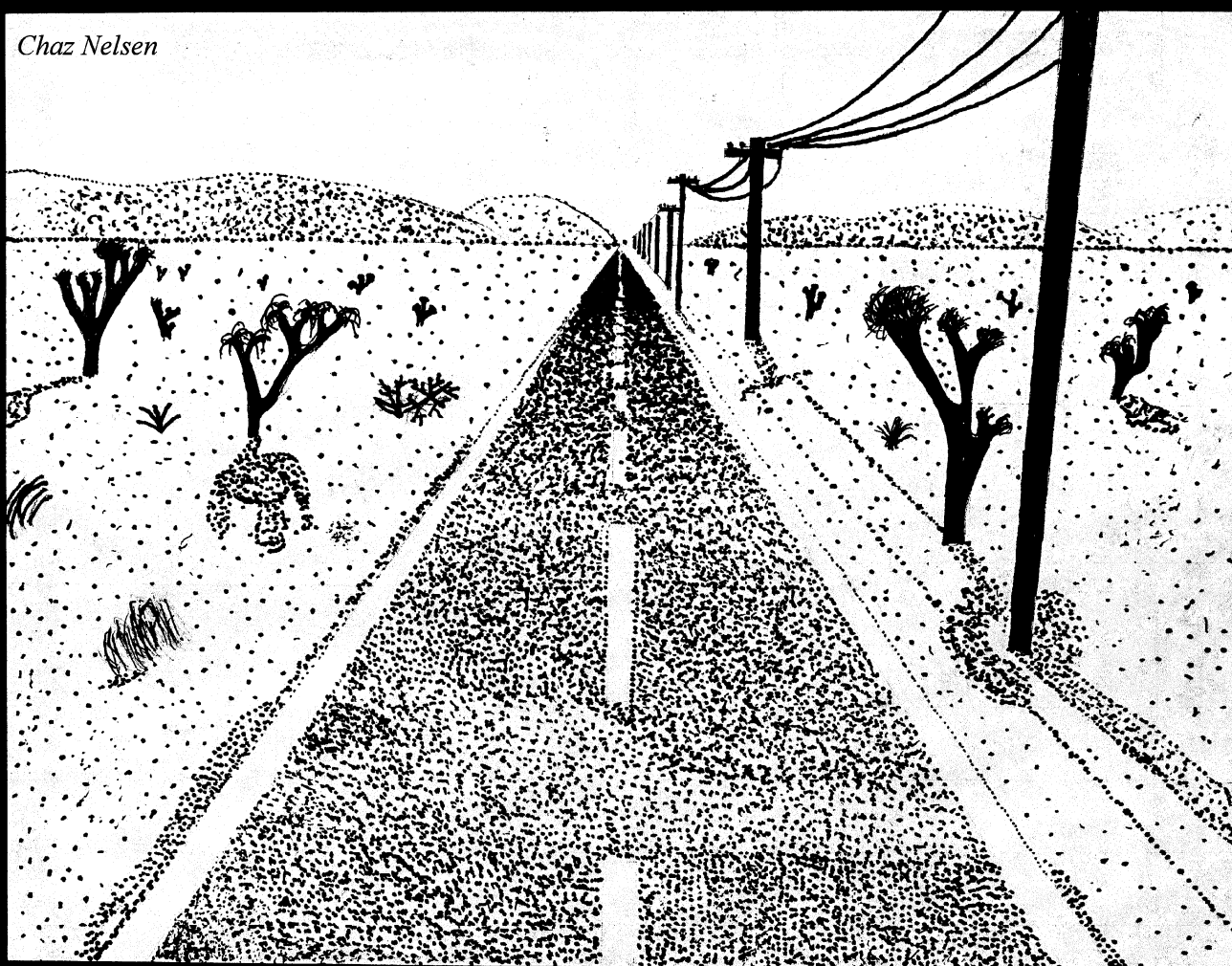

TEXAS REGISTER

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March 20, 2009

Pages 1921 - 2058

Chaz Nelsen



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 6, 2009

Appointed to be the Executive Commissioner of the Texas Youth Commission for a term to expire February 1, 2011, Cheryl Townsend of Austin. Ms. Townsend is being reappointed.

Appointed to be a member of the Central Colorado River Authority Board of Directors for a term to expire February 1, 2015, David Lance McWhorter of Coleman. Mr. McWhorter is being reappointed.

Appointed to be a member of the Board of Tax Professional Examiners for a term to expire March 1, 2015, Linda Lowes Hatchel of Woodway. Ms. Hatchel is being reappointed.

Appointed to be a member of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2013, John L. Moore of Denison (replacing Lisa Kaufman of Austin who no longer qualifies).

Appointed to be a member of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2015, John M. Bradley of Georgetown (Mr. Bradley is being reappointed).

Appointed to be a member of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2015, Kathryn J. Kotrla of Georgetown (Dr. Kotrla is being reappointed).

Appointed to be a member of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2015, Eulon Ross Taylor of Lubbock (Dr. Taylor is being reappointed).

Appointed as Deputy Assistant Adjutant General for the Army for a term at the pleasure of the Governor, Colonel Jeffrey Lynn Lewis of Cedar Park.

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Cheryl Townsend of Austin.

Appointed as Assistant Adjutant General for the Army for a term at the pleasure of the Governor, Brigadier General Joyce L. Stevens of Tomball. General Stevens is replacing General John T. Furlow.

Appointed as Assistant Adjutant General for the Air for a term at the pleasure of the Governor, Colonel John F. Nichols of Spring Branch. Colonel Nichols is replacing General Allen R. Dehnert.

Rick Perry, Governor

TRD-200901035



Proclamation 41-3175

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on January 30, 2009, certifying that an

extreme fire hazard posed a threat of imminent disaster in specified counties in Texas, beginning January 16, 2009 and continuing.

WHEREAS, the extreme fire hazard continues to create a threat of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Andrews, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Chambers, Childress, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Crane, Crockett, Dallam, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Harris, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hood, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Starr, Stephens, Sterling, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Trinity, Tyler, Upton, Uvalde, Val Verde, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wilbarger, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the Emergency Disaster Proclamation and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

The renewal of the Emergency Disaster Proclamation becomes effective on March 1, 2009, and shall remain in effect until March 30, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 27th day of February, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200901036

◆ ◆ ◆

Proclamation 41-3176

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in specified counties in Texas. The disaster proclamation was subsequently renewed through March 6, 2009, in the wake of Hurricane Ike; and

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas; and

WHEREAS, Hurricane Ike continues to create a state of disaster for the people in the State of Texas; and

WHEREAS, the state of disaster includes the counties of Anderson, Angelina, Aransas, Archer, Austin, Bell, Bexar, Bowie, Brazoria, Brazos, Burleson, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Coryell, Dallas, Denton, Ellis, El Paso, Fort Bend, Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lavaca, Leon, Liberty, Limestone, Lubbock, Madison, Marion, Matagorda, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith,

Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Waller, Walker, Washington, Webb, Wharton, Williamson, Wise and Wood;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

The renewal of the disaster proclamation becomes effective on March 7, 2009, and shall remain in effect until April 5, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 5th day of March, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200901037

◆ ◆ ◆

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Opinions

Opinion No. GA-0698

The Honorable Rob Eissler

Chair, Committee on Public Education

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Consequences attending a legislator's announcement of his candidacy for Governor during the first year of a two-year term (RQ-0736-GA)

S U M M A R Y

A legislator serving in the Texas House of Representatives who announces his or her candidacy for Governor during the first year of a

two-year term is not required to resign from service in the House of Representatives. Because a legislator is not required to resign from office upon announcing his or her candidacy for Governor, a legislator is likewise not required to resign while exploring a possible candidacy for Governor.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200901050

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: March 11, 2009

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101

The Texas Department of Agriculture (the department) adopts, on an emergency basis, an amendment to §19.101(b) in order to expand the quarantined area for the red imported fire ant, *Solenopsis invicta* Buren. The department adopted this emergency quarantine on November 5, 2008, which expired on March 4, 2009. The resubmission is identical with the initial submission, except that only a portion of the City of Lubbock, which is infested with the fire ants and a small area bordering this infestation, is quarantined instead of the entire Lubbock County. Systematic effort to contain and control this fire ant infestation is undertaken primarily by the City of Lubbock. The department conducts annual detection surveys in the counties bordering the red imported fire ant quarantined counties to monitor the sporadic encroachment of fire ant infestations. The detection surveys conducted in 2008 and in prior years indicated that Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Upton Throckmorton, Ward, Wilbarger, and Winkler counties have a widespread fire ant infestation beyond containment. The emergency action will slow the artificial spread of fire ants through movement of hay and nursery-floral commodities to fire ant-free areas. The nursery-floral articles from these counties will be allowed to move to the fire ant-free areas only after USDA approved quarantine treatments. Hay may only be shipped to fire ant free areas if it is stored in a manner that prohibits direct contact with the ground.

The emergency rule adds Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Ward, Wilbarger, Winkler, and Upton counties and a portion of the City of Lubbock to the list of quarantined areas, thereby restricting the movement of quarantined articles when transported from these areas to fire ant-free areas.

The departments believes that it is necessary to take this immediate action to prevent the artificial spread of the red imported fire ant into non-infested areas of Texas and other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate. The nursery industry as well as hay pro-

ducers in the non-infested counties are in peril because without this emergency quarantine their chances of becoming infested increase significantly. Once infested, they would be borne with the treatment expense to ship regulated articles to non-infested areas of Texas and other states. In addition, the U.S. Department of Agriculture is pressuring the department to quarantine the infested areas to reduce artificial spread of the ants to other states.

Amended §19.101 expands the quarantined area in correspondence with the detection of the red imported fire ant outside the current quarantined area. The department will be proposing adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.101. Quarantined Areas.

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Archer, Baylor, Brooks, Brown, Cameron, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Delta, Dimmit, Duval, Ector, Fisher, Haskell, Hidalgo, Howard, Irion, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Mason, Martin, Maverick, McCulloch, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Reagan, Red River, Runnels, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Terrell, Throckmorton, Upton, Val Verde, Ward, Webb, Wilbarger, Willacy, Winkler, Young, and Zavala counties in Texas, and the area of the City of Lubbock located within Highway 27 to the East, Highway 289 to the North, Milwaukee Street to the West, and 98th Street to the South are quarantined.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900967

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: March 6, 2009

Expiration Date: July 3, 2009

For further information, please call: (512) 463-4075

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101

The Texas Department of Agriculture (the department) proposes an amendment to §19.101, concerning the department's Red Imported Fire Ant Quarantine, in order to expand the quarantined area for the red imported fire ant, *Solenopsis invicta* Buren. The department conducts annual detection surveys in the counties bordering the red imported fire ant quarantined counties to monitor the sporadic encroachment of fire ant infestations. The detection surveys conducted in 2008 and in prior years indicated that Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Upton Throckmorton, Ward, Wilbarger and Winkler counties have a widespread fire ant infestation. In Lubbock County the infestation is limited to the central portion of the City of Lubbock but the rest of the county is free of red imported fire ant infestation. The proposed amendment will slow the artificial spread of fire ants through movement of hay and nursery-floral commodities to fire ant-free areas. The nursery-floral articles from these counties will be allowed to move to the fire ant-free areas only after application of U.S. Department of Agriculture-approved quarantine treatment to control fire ant infestation. Hay may only be shipped to fire ant free areas if it is stored in a manner that prohibits direct contact with the soil.

The proposed amendment adds Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Ward, Wilbarger, Winkler and Upton counties to the list of quarantined areas, thereby restricting the movement of quarantined articles when transported from these counties to fire ant-free areas. The City of Lubbock, Texas AgriLife Research and Extension Center and the county commissioners have been proactive in containing and controlling the limited fire ant infestation at the central portion of the City of Lubbock through pesticide treatment of and community outreach efforts.

The department believes that it is necessary to take the quarantine action to prevent the artificial spread of the red imported fire ant into non-infested areas of Texas and other states. The

nursery industry as well as the hay producers in the non-infested counties is in peril because without this quarantine their chances of becoming infested increase significantly. Once infested, they would be borne with the treatment expense to ship regulated articles to non-infested areas of Texas and other states. In addition, the U.S. Department of Agriculture is pressuring the department to quarantine the infested areas to reduce artificial spread of the ants to other states. Further, if a state declines to quarantine the fire ant-infested counties, the USDA could quarantine the entire state.

The proposed amendment to §19.101 expands the quarantined area in correspondence with the detection of the red imported fire ant outside the current quarantined area.

The department adopted an amendment to §19.101 on an emergency basis on November 5, 2008 (33 TexReg 9355), which expired on March 4, 2009. The department filed a revised emergency quarantine on March 6, 2009, now in effect, which is the same as the November 5 submission, except that only the fire ant-infested portion of the City of Lubbock is quarantined instead of all of Lubbock County. The proposed rule is identical to the March 6, 2009, emergency submission.

Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the amended section.

Dr. Bhatkar also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be to prevent introduction of the imported fire ant into the fire ant free areas of Texas and other states. There are about 156 registered nursery-floral operations in the counties proposed for quarantine, of which approximately 14 are nursery grower operations with estimated 200 acre growing area. These 14 businesses are considered as micro-businesses and none meet the criterion of a small business. The fire ant treatment would cost approximately \$445 per acre. Thus, to treat 200 acres, the cost will be approximately \$89,000. A treatment is not required to ship the quarantined articles within the quarantined area. Furthermore, a majority of the quarantined articles from the proposed quarantined counties is shipped to the counties currently under the quarantine. Consequently, the actual treatment cost is expected to be much lower than \$89,000. There would be some economic hardship to the hay producers since hay destined for shipment outside the quarantined area would need to be stored in a manner to prevent direct contact with the soil; however, such cost cannot be estimated. The shipments of quarantined articles can be made by issuing phytosanitary certificates at \$30 per inspection. Multiple certificates can be issued based on one inspection. A business may consider this cost as an overhead, or may recuper-

ate it by adding to the relevant shipment, by distributing over all the shipments, or by some other means. However, it is not possible to quantify cost because of different volume of shipments. The grower nurseries can enter into a compliance agreement with the department provided they follow the USDA-approved quarantine treatments for shipping the nursery-floral commodities to fire ant-free areas. These nurseries are issued USDA compliance stamps and are not charged for export certification. Because the proposed quarantine requirements and method of treatment is dictated by the USDA, the department is not able to provide a viable alternative to minimize the costs to affected micro-businesses.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine against out-of-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

The code affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.101. *Quarantined Areas.*

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Archer, Baylor, Brooks, Brown, Cameron, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Delta, Dimmit, Duval, Ector, Fisher, Haskell, Hidalgo, Howard, Irion, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Mason, Martin, Maverick, McCulloch, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Reagan, Red River, Runnels, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Terrell, Throckmorton, Upton, Val Verde, Ward, Webb, Wilbarger, Willacy, Winkler, Young, and Zavala counties in Texas, and the area of the City of Lubbock located within Highway 27 to the East, Highway 289 to the North, Milwaukee Street to the West and 98 Street to the South are quarantined.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.

TRD-200900990

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 463-4075



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.4

The Texas Board of Physical Therapy Examiners proposes amendments to §322.4, concerning Practicing in a Manner Detrimental to the Public Health and Welfare. The amendment states that a licensee who fails to report an apparent violation of the Practice Act is also guilty of violating the Act.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased professional oversight of the practice of physical therapy in Texas. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendment as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by this amendment.

§322.4. *Practicing in a Manner Detrimental to the Public Health and Welfare.*

(a) (No change.)

(b) Practicing in a manner detrimental to the public health and welfare may include, but is not limited to, the following:

(1) - (14) (No change.)

(15) practicing in an unregistered physical therapy facility which is not exempt; [-]

(16) failing to notify the Board of any conduct by another licensee which reasonably appears to be a violation of the Practice Act and rules, or aids or causes another person, directly or indirectly, to violate the Practice Act or rules of the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900961

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.2

The Texas Board of Physical Therapy Examiners proposes amendments to §341.2, concerning Continuing Education Requirements. The amendments will clarify that only continuing education specifically approved as meeting the ethics and professional responsibility requirement meets that requirement and will delete the date the requirement was initiated.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be less chance for error regarding ethics programs that meet renewal requirements. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendment as proposed, as the changes are expected to lower the costs associated with the approval of CE programs. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendment will not have an adverse economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by this amendment.

§341.2. Continuing Education Requirements.

(a) All continuing education (CE) submitted to satisfy renewal requirements must be board-approved, as established in §341.3 of this title (relating to [repealed] Qualifying Continuing Education).

(b) - (c) (No change.)

(d) All [Effective January 1, 2001, all] licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total CE requirement. Only programs receiving a supplemental ethics approval may be used to meet the ethics/professional responsibility CE requirement.

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.
TRD-200900962

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900

22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amendments to §341.3, concerning Qualifying Continuing Education. The amendments would add information about the accredited provider program and other changes to the continuing education approval program, update references to the Practice Review Tool, and clarify statements to be used by continuing education providers.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be a more efficient and effective CE approval process. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed, as the changes are expected to lower the costs associated with the approval of CE programs. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an adverse economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by these amendments.

§341.3. Qualifying Continuing Education.

(a) (No change.)

(b) Programs offered as continuing education (CE).

(1) (No change.)

(2) Program content and structure must be approved by the board-approved organization, or be offered by a provider accredited by that organization. Programs must meet the following criteria:

(A) - (G) (No change.)

(3) CE programs subject to this subsection [§341.3(b)] include the following:

(A) Traditional on-site CE programs.

(i) Documentation for CE programs must include the name and license number of the licensee; the title, sponsor, date(s),

and location of the course; the number of CEUs awarded, the signature of an authorized signer, and the accredited provider or the program approval number.

(ii) (No change.)

(B) Home study CE programs (hard copy or web-based).

(i) Documentation must include the name and license number of the licensee; the title, sponsor, date(s), and instructional format of the course; the number of CEUs awarded, the signature of an authorized signer, and the accredited provider or the program approval number.

(ii) (No change.)

(C) Regular inservice-type CE programs over a one-year period where individual sessions are 2 hours or less.

(i) Documentation must include the name and license number of the licensee; the title, sponsor, date(s), and location of the inservice; the signature of an authorized signer, and the accredited provider or the program approval number with the maximum CEUs granted and the CEU value of each session or group of sessions specified and justified.

(ii) - (iii) (No change.)

(D) Large conferences with concurrent CE programming.

(i) Documentation must include the licensee's name and license number; title, sponsor, date(s); and location of the conference; the number of CE units awarded, the signature of an authorized signer, and the accredited provider or the course approval number.

(ii) (No change.)

(c) College or university courses.

(1) - (3) (No change.)

(4) College or university sponsored CE programs (no grade, no official transcript) must comply with subsection [§341.3](b) of this section [title].

(d) Self-directed study.

(1) - (2) (No change.)

(3) Residencies, Fellowships, [and] Examinations, and Practice Review Tools.

(A) - (B) (No change.)

(C) The [successful] completion of a Practice Review Tool [an examination] of the Federation of State Boards of Physical Therapy [pertaining to continued competence] may be submitted for consideration for the CE requirement unless the activity is [excluding any examination for initial licensure or examination] required as a part of a disciplinary action.

(D) Maximum CEU values for Residencies, Fellowships, [and] Examinations, and Practice Review Tools shall be as follows but shall not meet the Ethics CEU requirement for license renewal:

(i) - (ii) (No change.)

(iii) Completion [Successful completion] of a Practice Review Tool [an examination] of the Federation of State Boards of Physical Therapy [pertaining to continued competence] shall be worth up to 1.5 CEUs.

(E) (No change.)

(4) (No change.)

(e) Accreditation of providers or approval [Approval] of continuing education programs, college or university courses, or self-study by the board-approved organization.

(1) Pursuant to a Memorandum of Understanding (MOU) with the board, the Texas Physical Therapy Association (TPTA) shall act as the board-approved organization and shall be authorized to accredit providers and to evaluate and approve continuing education programs, college or university courses, or self-study for purposes of compliance with mandatory CE requirements as set by the board. This authority shall include authority to give, deny, withdraw and limit accreditation of providers and approval of programs, college or university courses, or self-study, and to charge and collect fees as set forth in the MOU and in the statute and rules governing the board and the practice of physical therapy in Texas.

(2) To be recognized as qualifying continuing education, a program, college or university course, or self-study must be evaluated and approved by the TPTA, or be offered by a provider accredited by the TPTA. A program may be approved before or after the licensee attends it.

(3) To apply for program approval, the licensee or program sponsor must submit a fee as approved by the board with the CE approval application and any additional documentation as specified in this section [§341.3] to the TPTA. Interested parties may contact the TPTA in Austin, Texas, (512) 477-1818, www.tpta.org. College or university courses are exempt from fees.

(4) Use of statements for publicity.

(A) Sponsors of approved programs may use the following statement in publicity: "This course has been approved by the Texas Board of Physical Therapy Examiners as meeting continuing education requirements for physical therapists and physical therapist assistants."

(B) Sponsors of programs receiving a supplemental ethics approval may use the following statement in publicity: "This course has been approved by the Texas Board of Physical Therapy Examiners as fulfilling _____ hour(s) of the ethics and professional responsibility requirement for license renewal purposes for physical therapists and physical therapist assistants."

(C) Accredited providers may use the following statement in publicity: "This course is provided by the Texas Board of Physical Therapy Examiners Accredited Provider # _____ and meets continuing education requirements for physical therapist and physical therapist assistant licensure renewal in Texas."

~~[(4) A program may be provided more than one time and at different locations for within one year from the date that it is first offered without payment of additional fees.]~~

~~[(5) Sponsors of approved programs may use the following statement in publicity: "This course has been approved by the Texas Board of Physical Therapy Examiners as meeting continuing education requirements for physical therapists and physical therapist assistants."]~~

~~[(6) Interested parties may contact the TPTA to inquire if a particular program is approved. A list of approved programs is available on the TPTA web site.~~

~~[(7) Pursuant to the MOU, the TPTA shall provide quarterly reports to the board of its activities. Additionally, the TPTA shall report to the board the results of periodic quality assurance follow-up or review of a representative sample of approved continuing~~

education programs. In the event of sponsor noncompliance, results will be reported to the board in writing for further investigation and direction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900963

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900



PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning Internship Training Schedule.

Section 391.3(14) is amended to update present practices from policy to rule.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the amendment as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be better than present practices. There will be no effect on small or micro businesses. There will be minimal or no effect to individuals required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the amendment.

§391.3. *Internship Training Schedule.*

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) - (13) (No change.)

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board.

(A) To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application.

(B) To transfer an internship from one sponsor to another sponsor, the intern must first request permission from the Board in writing, providing the Board with the proposed sponsor's name, mailing address, and telephone number. The proposed sponsor must also notify the Board in writing of their intent to sponsor the intern. The Board will grant or deny permission for the request and will inform the intern, the original sponsor, and the proposed sponsor of its decision in writing.

(15) - (17) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.

TRD-200900991

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 424-2058



PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER E. CONTESTED CASES

22 TAC §661.62

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.62, concerning the complaint process.

The amendment will add language as to when a land surveyor may request a contested case hearing or an Informal Settlement Conference and clarify the time limit during which this request may be made.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the amount of time a respondent has to request a contested case hearing or an Informal Settlement Conference.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building

A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, Chapter 661, General Rules of Procedures and Practices.

§661.62. *Complaint Process.*

(a) - (d) (No change.)

(e) Request for Administrative Hearing.

(1) A respondent who is the subject of proposed administrative action by the executive director may appeal the executive director's determination by requesting a contested case hearing or an Informal Settlement Conference as provided herein within 20 business days of receiving notice of the violation. The request must be in a written form that references the complaint number and indicates that the respondent intends to request a contested case hearing. Upon receipt of the request for hearing, the executive director will set a hearing and provide a copy of the complaint and notice of the hearing to the respondent.

(2) - (8) (No change.)

(f) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900941

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 239-5263



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 702. RELATIONSHIP BETWEEN COUNCIL AND PRIVATE ORGANIZATIONS AND DONORS

25 TAC §§702.1 - 702.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Cancer Prevention and Research Institute of Texas or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Cancer Prevention and Research Institute of Texas (Institute), formerly the Texas Cancer Council, proposes the repeal of §§702.1 - 702.4, concerning the relationship between the council and private organizations and donors. The 2007 Legislature enacted House Bill 14, which amended Chapter 102 of the Health and Safety Code, abolished the Texas Cancer Council, created the Institute, and expressly directs the Institute's Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee. The rules currently in Chapter 702 are not adequate to address the rules required by the law. The matters addressed by the repealed provisions will be incorporated into a new Chapter 702. The sections of new Chapter 702 are proposed in this issue of the *Texas Register*.

Sandra K. Balderrama, MPA, BSW, the Interim Administrative Director of the Cancer Prevention and Research Institute of Texas has determined that for the first five-year period the repeal is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the repeal.

Ms. Balderrama also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Ms. Balderrama has determined that the repeal shall not have an effect on small businesses or on micro businesses.

Comments on the proposed repeal may be submitted to Sandra Balderrama, Interim Administrative Director, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711.

The repeal is proposed under the authority of the Texas Health and Safety Code Annotated, §102.101(e) and §102.106, which provide the Institute with the authority to govern members of the Oversight Committee and its own activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest.

There is no other statute, article or code that is affected by this proposed repeal.

§702.1. *Authority and Purpose.*

§702.2. *Donations.*

§702.3. *Standards of Conduct.*

§702.4. *Special Events.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2009.

TRD-200900915

Sandra Balderrama

Interim Administrative Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 438-3029



CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING RELATIONSHIPS BETWEEN THE INSTITUTE AND PRIVATE ORGANIZATIONS AND DONORS

25 TAC §§702.1, 702.3, 702.5, 702.7, 702.9, 702.11, 702.13, 702.15

The Cancer Prevention and Research Institute of Texas (Institute) proposes a new Chapter 702, §§702.1, 702.3, 702.5, 702.7, 702.9, 702.11, 702.13, and 702.15, regarding institute standards on ethics and conflicts, including relationships between the institute and private organizations and donors.

These proposed rules are based on the federal regulations applicable to scientific peer review of research grant applications and research and development contract projects of the National Institutes of Health (NIH). The federal NIH regulations are found at 42 CFR 52h. The Texas Health and Safety Code, §102.106 directs the Institute Oversight Committee to adopt such rules to apply to the Oversight Committee. In addition, these rules are adopted pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes. These rules, therefore, incorporate the matters addressed in the prior Chapter 702 rules, which are being repealed in their entirety and are being replaced with these rules. The rules will be incorporated into the Institute's ethics policy manual.

New §702.1 is proposed to set forth the authority for the rules of Chapter 702.

New §702.3 is proposed to define various terms used throughout the chapter.

New §702.5 is proposed to express the Oversight Committee's intent regarding the applicability of the rule to various individuals associated with the Institute and the grants it awards.

New §702.7 is proposed to address how donations to the Institute will be handled. It is not a substantive change to what currently exists in Chapter 702, which is being repealed.

New §702.9 is proposed to provide general standards of conduct for employees of the Institute and members of the Oversight Committee. This rule expresses the Oversight Committee's intent that the statutes of Texas Government Code §572.051 are made mandatory for Institute employees and Oversight Committee members.

New §702.11 is proposed to set forth the Institute's policy on recusal and conflicts of interest by stating what types of personal or private interests will be sufficient to require: recusal of an oversight committee member; recusal of others; and recusal of peer review group members involved in awarding, administering, reviewing, or evaluating a grant proposal or awarded grant.

New §702.13 is proposed to provide a procedure for individuals subject to the conflict rules to obtain a determination on behalf of the Institute as to whether a conflict of interest exists and whether recusal is required.

New §702.15 is proposed to require Oversight Committee members to receive regular training in the state's open government laws.

Sandra K. Balderrama, MPA, BSW, the Interim Administrative Director of the Cancer Prevention and Research Institute of Texas has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the new rules.

Ms. Balderrama also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Balderrama has determined that the new rules shall not have an effect on small businesses or on micro businesses.

Comments on the proposed rules may be submitted to Sandra Balderrama, Interim Administrative Director, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711.

The new sections are proposed under the authority of the Texas Health and Safety Code Annotated, §102.101(e) and §102.106, which provide the Institute with the authority to govern members of the oversight committee and its own activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest.

There is no other statute, article or code that is affected by these proposed new sections.

§702.1. Authority.

This chapter is adopted pursuant to and in satisfaction of the provisions of Texas Government Code Annotated, Chapters 572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes.

§702.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act means the Texas Health and Safety Code, Chapter 102.

(2) Conflict of interest means a member of the peer review group or close relative or professional associate of the reviewer has a financial or other interest in an application or proposal that is known to the reviewer or the government official managing the review and would cause a reasonable person to question the reviewers impartiality if he or she were to participate in the review.

(3) Awarding official means the Oversight Committee and any other officer or employee of the Institute to whom the authority to make an award has been delegated; except that where the Act specifically authorizes another official to make awards in connection with a particular program, the awarding official shall mean that official and any other officer or employee of the Institute to whom the authority to make an award has been delegated.

(4) Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) CPRIT and Institute mean the Cancer Prevention and Research Institute of Texas.

(6) Close relative means a parent, spouse, domestic partner, or son or daughter.

(7) Contract proposal means a written offer to enter into a contract that is submitted to the appropriate agency official by an indi-

vidual or other entity, which includes, at a minimum, a description of the nature, purpose, duration, and cost of the project, and the methods, personnel, and facilities to be utilized in carrying out the project. A contract proposal may be unsolicited by the Institute or submitted in response to a request for proposals.

(8) Development means the systematic use of knowledge gained from research to create useful materials, devices, systems, or methods.

(9) Entity means any entity recognized by law, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust, as well as any program, enterprise, non-profit corporation public or private research or academic institution.

(10) Executive Director means the Executive Director of the CPRIT and any other official or employee of the CPRIT to whom the authority involved has been delegated.

(11) Executive-level employee means the Executive Director, Chief Operating Officer, General Counsel, Chief Prevention Officer, Chief Scientific Officer and other similarly situated employee with decision-making authority. It also means any individual employed by the Institute who is compensated, as of the last date of state employment or at the time a determination regarding conflict of interest is made, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(12) Grant as used in this chapter includes cooperative agreements.

(13) Grant proposal or grant application means any application to receive funding from the Institute.

(14) Grant recipient or awarded grant means any entity, natural or legal, and any person who has been awarded or received grant funds from the Institute.

(15) Institute means the Cancer Prevention and Research Institute of Texas or CPRIT.

(16) Institute employee means any individual within the employ of the Institute, including any individuals performing duties for the Institute pursuant to a contract of employment.

(17) Oversight Committee member means any person appointed to and serving on the Oversight Committee of the Institute, or any person who sits on that board by operation of statute or by designation.

(18) Peer review group, also referred to as scientific review group, means a group of primarily non-government experts qualified by training and experience in particular scientific or technical fields, or as authorities knowledgeable in the various disciplines and fields related to the scientific areas under review, to give expert advice on the scientific and technical merit of grant applications or contract proposals, or the concept of contract projects, in accordance with the rules of the Institute.

(19) Personal or private interest in an entity exists, notwithstanding the provisions of Texas Government Code Chapter 572, when an Oversight Committee member or the member's spouse:

(A) Owns or controls, directly or indirectly, less than a 5% interest in a business entity or other organization receiving money from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control,

include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included;

(B) Is a member of the board of directors, other governing board or any committee of the entity;

(C) Serves as an elected or appointed officer of the entity;

(D) Is an employee of the entity or is negotiating future employment with the entity;

(E) Represents in business or law; this prohibition includes close relatives; or

(F) Could reasonably foresee that an action taken by the Institute or its Oversight Committee could result in a financial benefit to the individual of 100% or more.

(20) Principal investigator means a single individual designated by the grantee in the grant application and approved by the Institute, who is responsible for the scientific and technical direction of the project.

(21) Professional associate of the reviewer means any colleague, scientific mentor, or student with whom the peer reviewer is currently conducting research or other significant professional activities or with whom the member has conducted such activities within three years before the date of the review.

(22) Project approach means the methodology to be followed and the resources needed in carrying out the project.

(23) Project concept means the basic purpose, scope, and objectives of the project.

(24) Project period means that time period during which the project may be supported.

(25) Request for proposals means an Institute solicitation to prospective offerors to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals shall contain information sufficient to enable all offerors to prepare proposals, and is as complete as possible with respect to: nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.

(26) Research means a systematic investigation, study or experiment designed to contribute to general knowledge relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanisms relating to, the biological functions, diseases, or related matters to be studied.

(27) Research and development contract project means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to acquire new or fuller knowledge and understanding in the areas of cancer research and/or to use such knowledge and understanding to develop useful materials, devices, systems, or methods.

(28) Scientific review group has the same meaning as peer review group, which is defined in paragraph (18) of this section.

(29) Solicited contract proposal means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids;" responses to requests for proposals (negotiation) are offers called "proposals."

(30) Unsolicited contract proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the state and that is not in response to a request for proposals, Broad Agency Announcement, Program Research and Development Announcement, or any other Institute-initiated solicitation or program.

§702.5. Intent.

It is the intent of the Institute that any person or entity subject to these policies avoids even the appearance of impropriety or self-dealing.

§702.7. Donations.

(a) All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.

(b) A member or an employee of the Institute shall not authorize a donor to use the property of the Institute unless the property is used in accordance with a contract between the Institute and the donor, the contract is found by the Institute to serve a public purpose, the contract contains provisions to ensure the public purpose continues, and the Institute is reasonably compensated for the use of the property.

§702.9. General Standards of Conduct.

Notwithstanding the provisions of Texas Government Code Chapter 572:

(1) A member of the Oversight Committee or employee of the Institute shall not accept or solicit any gift, favor, or service that might reasonably tend to influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence him or her with the intent to influence his or her official conduct.

(2) A member of the Oversight Committee or employee of the Institute shall not accept employment or engage in any business or professional activity, which he or she might reasonably expect would require or induce that person to disclose confidential information acquired by reason of his or her official position.

(3) A member of the Oversight Committee or employee of the Institute shall not accept other employment or compensation, which could reasonably be expected to impair his or her independence of judgment in the performance of his or her official duties.

(4) A member of the Oversight Committee or employee of the Institute shall not make personal investments or have a financial interest which could reasonably be expected to create a substantial conflict between his or her private interest and the individual's official duties as a member of the Oversight Committee or employee of the Institute.

(5) A member of the Oversight Committee or employee of the Institute shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another.

§702.11. Recusal and Conflicts of Interest.

(a) Personal or private interest (as defined in §702.3(19) of this chapter) requiring Committee member recusal. An Oversight Committee member with a personal or private interest in a decision before the Oversight Committee, must disclose the interest in an open meeting of the Oversight Committee and must recuse him/her self from participation in the matter.

(b) Personal or private interest requiring recusal of others. A member of a advisory committee, an executive level employee of the Institute or Institute employee in a position to influence the awarding,

administration, review or evaluation of a grant proposal or awarded grant who has an ownership interest of 5% or more in an entity that applies for or receives a grant from the institute is required to inform the presiding officer of the Oversight Committee and the Executive Director and to recuse him/her self from participation in that matter.

(c) Personal or private interest requiring recusal of peer review group. A member of a peer review group in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant is required to inform the Executive Director and to recuse himself/herself from participation in that matter if he/she or a close relative:

(1) Owns or controls, directly or indirectly, an ownership interest of 5% or more in a business entity or other organization receiving or applying to receive money from the Institute. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included;

(2) Is a member of the board of directors, other governing board or any committee of the entity;

(3) Serves as an elected or appointed officer of the entity;

(4) Is an employee of the entity or is negotiating future employment with the entity;

(5) Represents in business or law; or

(6) Could reasonably foresee that an action taken by the peer review group, Institute or its Oversight Committee could result in a financial benefit to the individual of 100% or more.

(d) An Oversight Committee member, executive level employee of the Institute, or Institute employee in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant shall not lease, directly or indirectly, any property, capital equipment, employee or service to any program, business, enterprise or institution that receives a grant from the Institute.

(e) Any appearance of a conflict of interest will result in recusal of a member of the Oversight Committee, a member of a peer review group, or a member of an advisory group, executive level employee of the Institute, or Institute employee in a position to influence the awarding, administration, review or evaluation of a grant proposal or awarded grant, unless a waiver is issued in compliance with §702.13 of this chapter, concerning procedures, determining that it would be difficult or impractical to carry out the review or action otherwise, and the integrity of the review process or committee action would not be impaired by the member's participation.

(f) A member of the Oversight Committee shall not submit a grant application for funding by the Institute.

(g) The Executive Director may provide guidance to the members of the Oversight Committee, to individuals responsible for managing reviews, and to reviewers on what interests would constitute a conflict of interest or an appearance of a conflict of interest.

§702.13. Procedures.

(a) An Oversight Committee member or a member of an advisory group who has a personal or private interest as defined by this chapter or an interest that has the appearance of impropriety or self-dealing shall immediately notify the Executive Director of such interest. In the event of such notice or in the event the Executive Director has such an interest, the Executive Director will notify the presiding officer of the Oversight Committee and the General Counsel who shall immediately determine the nature and extent of the conflict, if any.

(b) The General Counsel shall investigate the matter and shall notify the Executive Director and presiding officer of the Oversight Committee of the facts giving rise to the potential conflict and shall provide an opinion whether a conflict of interest or the appearance of impropriety or self-dealing exists and any appropriate course of action. If the conflict is held by the presiding officer, the General Counsel shall provide the opinion to the next ranking member of the Oversight Committee who has no conflict.

(c) After consulting with the presiding officer (or, if appropriate, the next highest ranking Oversight Committee member), the presiding officer shall take immediate actions regarding the recusal of the individual from any discussion of or access to information regarding the matter at issue.

(d) A final determination regarding the existence of a conflict of interest, appearance of impropriety or self-dealing regarding a matter involving a member of the Oversight Committee, a member of an advisory group, or the Executive Director can be made on behalf of the Institute by the presiding officer of the Oversight Committee, the next highest ranking member of the Oversight Committee if the individual at issue is the presiding officer, or by vote of the Oversight Committee or the Executive Committee.

(e) Individuals are encouraged to self-report. Any Oversight Committee member, who self-reports a potential conflict of interest or any interest that has the appearance of impropriety or self-dealing, and who fully complies with any recommendations of the General Counsel and a final determination regarding recusal from any discussion, voting, or access to information regarding the matter, shall be considered by the Institute to be in compliance with these rules. The individual is still subject to the operation of other laws, rules, requirements or prohibitions.

(f) This section does not apply to employees of the Institute other than the Executive Director or to members of a peer review group. If an employee of the Institute other than the Executive Director or a member of a peer review group has a personal or private interest as defined by this chapter, any other interest that is expressly prohibited by this chapter, or any interest that has the appearance of impropriety or self-dealing, the employee or peer review group member should report the interest to the Executive Director who may take any steps necessary to address the matter without referral of the matter to the Oversight Committee.

§702.15. Availability of Information.

The members of the Oversight Committee shall receive training on the Texas Public Information Act and the Texas Open Meetings Act after the conclusion of each regular session of the Texas Legislature. This requirement is in addition to any statutorily required training and may be met by attending a training session during a meeting of the Oversight Committee, or via other form of in-person, video, or on-line training approved by the Attorney General.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 3, 2009.

TRD-200900916

Sandra Balderrama

Interim Administrative Director

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 438-3029



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 105. GENERAL CONTRACTING RULES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes amendments and a new rule to the DARS rules in Title 40, Part 2, Chapter 105, General Contracting Rules. This proposal amends Subchapter A, General Contracting Information, §105.1003, Definitions, Subchapter B, Contractor Requirements, §105.1013, General Requirements for Contracting, and adds new §105.1019, Contract Assignment.

DARS is proposing to amend §105.1003 and §105.1013 and add new §105.1019, to establish procedures for contract assignment.

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the proposed rules will be in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Wheeler has determined that for each year of the first five years the proposed rules will be in effect, the public benefit anticipated as a result of enforcing the rules will be establishment of a process for contractors to assign their contract.

Mr. Wheeler has also determined that there will be no probable economic cost to persons who are required to comply with the proposed rules. Further, in accordance with Texas Government Code §2001.022, he has determined that the proposed rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses, as result of enforcing or administering the rules.

Written comments on the proposed rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to Nancy.Mikulencak@dars.state.tx.us.

SUBCHAPTER A. GENERAL CONTRACTING INFORMATION

40 TAC §105.1003

The amendment is proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§105.1003. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Contract Assignment--The transfer of contractual rights held by one party to another party.

(7) ~~[(6)]~~ Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or sub-recipient holding a written agreement with a grantor or sub-recipient to carry out all or part of a program.

(8) ~~[(7)]~~ Contract-related records--All financial and programmatic records, supporting documents, papers, statistical data, or any other written or electronic materials that are pertinent to each specific contract instrument.

(9) ~~[(8)]~~ Corrective Action Plan--Specific steps to be taken by a contractor to resolve identified deficiencies and/or to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, rules or regulations. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting and/or financial stability).

(10) ~~[(9)]~~ Effective Date--The date of complete execution of the contract or the date upon which the parties agree the contract shall take effect.

(11) ~~[(10)]~~ Entity--An association, organization, governmental or business body, or existing body or class of persons that is chartered or organized for representing the interest of persons.

(12) ~~[(11)]~~ Grant--An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency.

(13) ~~[(12)]~~ Interlocal Contract--A contract made under Government Code, Chapter 791, and involving one or more local governments.

(14) ~~[(13)]~~ Memorandum of Understanding (MOU)--A written document evidencing the understanding or agreement of two or more parties regarding the subject matter of the agreement. Because the underlying agreement may or may not be legally binding and enforceable in and of itself, a memorandum of understanding may or may not constitute a contract. It is generally considered a less formal way of evidencing an agreement, and is ordinarily used in state government only between or among state agencies or other government entities. The term is used interchangeably with "memorandum of agreement."

(15) ~~[(14)]~~ Program--DARS activities designed to deliver services or benefits provided by statute.

(16) ~~[(15)]~~ Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and/or materials required in the original contract.

(17) ~~[(16)]~~ Vendor Hold--A suspension of payments to a contractor by the contracting state agency due to the contractor's failure to comply with the terms of the contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.

TRD-200900984

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 424-4050



SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §105.1013, §105.1019

The amendment and new rule are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code §531.033 and §2155.144, which grant HHSC the authority to promulgate rules for the acquisition of goods and services, and Texas Government Code §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§105.1013. General Requirements for Contracting.

(a) To contract with the Department of Assistive and Rehabilitative Services (DARS) the contractor must:

(1) - (13) (No change.)

(14) notify DARS in writing of changes to contract information according to the requirements of their contract. Unless otherwise specified in the contract, the contractor must notify DARS:

(A) within 10 calendar days after any address change, which includes the location of the agency's office, physical address, and/or mailing address;

(B) immediately of any change in administrator or director;

(C) within seven working days of any change in the contact telephone number designated in the contract; and

~~[(D)] prior to any change in entity name or type; and~~

(D) ~~[(E)]~~ within 10 calendar days of any change in legal status with the Texas Secretary of State; and

(15) report suspected violation of rules or laws to the appropriate investigative authority. This includes reporting abuse, neglect, and exploitation issues to the Texas Department of Family and Protective Services (DFPS) or to the appropriate Texas Department of Aging and Disability Services (DADS) licensing staff.

(b) - (i) (No change.)

§105.1019. Contracting Assignment.

(a) Without prior written approval from DARS, a contractor must not assign:

(1) their DARS contract, in whole or in part; or

(2) any right or duty required under the contract.

(b) A contract assignment is necessary when a different entity consents to assume ownership of a contractor's contract with DARS, including when there is a:

(1) change in contract ownership, such as the sale of the contract;

(2) change in legal status with the Texas Secretary of State (SOS), such as changing from a partnership to a corporation without filing articles of conversion with and receiving approval from SOS;

(3) change in employer identification number (EIN), unless DARS approves an exception; or

(4) transfer from one legal entity to another through a legal process, such as a sale by a bankruptcy trustee.

(c) A contract assignment is not necessary when a contractor undergoes a change in:

(1) name only that is not related to one of the events noted in subsection (b) of this section;

(2) legal status that involves filing articles of conversion with and receiving documented approval from the SOS, such as a limited partnership (LP) changing to a corporation for which articles of conversion have been filed with and are approved by SOS; or

(3) ownership, such as sale of majority ownership of stock.

(d) A contractor must notify DARS in writing at least 60 calendar days prior to the intended effective date of any change in legal entity status that would require a contract assignment.

(e) A contractor must return all required contract assignment forms and documents to DARS by the date requested by DARS.

(f) DARS may choose not to approve a contract assignment when:

(1) a contractor, proposed assignee, or a controlling party has a prior unsatisfactory history in contracting with DARS or with another Health and Human Services agency, and/or may not be able to provide acceptable service under the contract;

(2) a contractor or proposed assignee:

(A) subcontracts any services without specific authorization from DARS; or

(B) assigns or transfers the contract without prior written approval of DARS; or

(3) DARS determines it is not in the best interest of DARS.

(g) In appropriate circumstances, DARS may terminate a contract or take other adverse action if DARS does not approve a contract assignment.

(h) DARS determines the effective date of a contract assignment.

(i) DARS sends a contractor written notice of the contract assignment approval or disapproval. If DARS does not approve the contract assignment, the notice includes the action that DARS will take regarding the contract.

(j) Failure of a contractor to comply with any of the requirements in this section may result in denial of the contract assignment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.

TRD-200900985

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 424-4050



CHAPTER 106. DIVISION FOR BLIND SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend and repeal the DARS rules in Title 40, Part 2, Chapter 106, Division for Blind Services. This proposal amends Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, and Subchapter I, Blind Children's Vocational Discovery and Development Program, Division 1, General Information, §106.1403 and §106.1407, and Division 5, Order of Selection for Payment of Services, §106.1489. This proposal also repeals Subchapter I, Division 1, §106.1405, Remedy of Dissatisfaction.

The purpose of the amendments and repeal is to clarify program language and to remove incorrect and obsolete language and rules.

Specifically, this proposal amends Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, by clarifying language concerning academic training; and Subchapter I, Blind Children's Vocational Discovery and Development Program, Division 1, General Information, §106.1403, by removing the internal reference to a repealed rule; §106.1407, by adding the definition for "deafblind"; and Division 5, Order of Selection for Payment of Services, §106.1489, by clarifying the order of selection for deafblind consumers and removing priorities for services that are no longer funded. In Subchapter C, Vocational Rehabilitation Program, Division 3, Vocational Rehabilitation Services, §106.557, subsection (b)(11) is being deleted, as it is now obsolete. This proposal also repeals Subchapter I, Division 1, §106.1405, Remedy of Dissatisfaction, which is now obsolete.

The proposed rule changes are authorized by the Rehabilitation Act of 1973, Section 701 et seq. (as hereafter amended), the Randolph-Sheppard Act, Texas Government Code, §2001.01 et seq., and the Texas Human Resources Code, Chapters 22, 35, and 91 (as hereafter amended).

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the proposed rules will be in effect, there will be no foreseeable fiscal implications for state or local government costs or revenues as a result of enforcing or administering the rules.

Mr. Wheeler has determined that for each year of the first five years that the proposed rules will be in effect, the public benefit anticipated as a result of enforcing the proposed rules will be a more consistent delivery of the agency's vocational rehabilitation program and blind children's program services in accordance with federal regulations.

Mr. Wheeler has also determined there will be no probable economic cost to persons who are required to comply with the proposed rules. Further, in accordance with Texas Government

Code, §2001.022, he has determined that the proposed amendment will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas, 78756 or electronically to Nancy.Mikulencak@dars.state.tx.us.

SUBCHAPTER C. VOCATIONAL REHABILITATION PROGRAM DIVISION 3. VOCATIONAL REHABILITATION SERVICES

40 TAC §106.557

The amendment is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.557. Vocational and Other Training Services.

(a) (No change.)

(b) Academic training in institutions of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) shall be subject to the following:

(1) - (5) (No change.)

(6) If the consumer chooses to obtain academic training at a private university or out of Texas and the provisions in paragraph (5) of this subsection do not apply, academic support shall be limited to that which the person would receive if they attended a state-supported college or university in Texas.

(7) - (10) (No change.)

~~{(11) If a consumer is blind and is attending a non-tax-supported college or university, tuition and fees may be paid by the Division regardless of economic need of the consumer. However, the Division shall not pay tuition and fees in excess of the college or university's published rate for training. If the college or university does not have a published rate, tuition and fees shall be paid at rates in accordance with a written agreement between the college or university and the Division.}~~

(11) ~~[(12)]~~ Once admitted to academic training:

(A) A consumer must maintain and complete a full-time course load as defined by the college or university. This requirement may be waived if:

(i) the person is a graduating senior;

(ii) the person is an incoming freshman (first two semesters or quarters);

(iii) the person is a returning adult (first academic year only);

(iv) the person is in summer school; or

(v) other extenuating circumstances prevent the consumer from participating in a full-time course load.

(B) The consumer shall meet with the counselor at least once each semester, shall submit add or drop slips as changes occur, and shall provide grade slips or transcripts to the counselor at the end of each semester.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 424-4050

SUBCHAPTER I. BLIND CHILDREN'S VOCATIONAL DISCOVERY AND DEVELOPMENT PROGRAM DIVISION 1. GENERAL INFORMATION 40 TAC §106.1403, §106.1407

The amendments are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1403. Public Access to Information, Forms and Documents.

Requests for access to or copies of information maintained by the Division in the administration of this chapter are handled according to §106.1411 of this chapter pertaining to confidentiality of records~~[- and §101.3681, et seq. of this title pertaining to requests for public information].~~

§106.1407. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The use of the singular or plural case is not meant to be limiting unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Deafblind--A combined loss of vision and hearing that significantly affects access to communication, learning, socialization, activities of daily living and mobility.

(7) [(6)] Developmental services--Services that increase the capabilities and functional abilities of a child in a noneducational setting.

(8) [(7)] Educational support services--Services that assist a child in gaining the maximum benefit from educational services provided by others.

(9) [(8)] Federal poverty level--The amount of income, depending on family size, that the United States Division of Health and

Human Services determines to be the level of income below which a family is classified as being in poverty.

(10) [(9)] Habilitation services--Services that develop a severely visually impaired child's skills for independent living and potential employment.

(11) [(10)] Nonsevere visual loss--A visual acuity such that one eye meets the definition of blind or severe visual loss and the acuity in the other eye with best correction is better than 20/70, or a visual acuity in both eyes with best correction of better than 20/70.

(12) [(11)] Parent--The child's natural or adoptive parent; or the spouse of the child's natural or adoptive parent; or the child's guardian, surrogate parent; or the spouse of the guardian or surrogate parent; or a person or spouse of the person who is acting as the child's parent.

(13) [(12)] Referral--A child who has been referred to the BCVDD Program for services but for whom an application has not been completed.

(14) [(13)] Restoration services--Services to eliminate or reduce limitations imposed by a visual impairment on the functioning of a child and cosmetic services necessary to improve the physical appearance of the child's eyes when the eyes are abnormal to the extent that they negatively impact the child's social and emotional well-being.

(15) [(14)] Severe visual loss--A loss of vision such that the best corrected visual acuity is between 20/70 and 20/200 in the better eye; or a visual loss such that the visual field is 30 degrees or less but greater than 20 degrees with best correction.

(16) [(15)] Severely visually impaired child--A child with a visual impairment that has resulted in a permanent condition of blindness or severe visual loss; or a child who has been certified as blind or severely visually impaired by a local education agency; or a child who has been determined to be functioning as a person who is blind or who has a severe visual loss.

(17) [(16)] Technology services--Services to provide a child access to an item, piece of equipment, or product system that maintains or improves the child's communication, independent living, social, or prevocational skills.

(18) [(17)] Visual impairment--An injury, disease, or other disorder that reduces, or if not treated will probably result in reducing, visual functioning; or a visual condition requiring cosmetic treatment, psychological assistance, counseling, or other assistance that the Division can render.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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40 TAC §106.1405

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1405. *Remedy of Dissatisfaction.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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DIVISION 5. ORDER OF SELECTION FOR PAYMENT OF SERVICES

40 TAC §106.1489

The amendment is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§106.1489. *Order of Selection Expenditure Categories.*

Order of Selection expenditure categories, from most restrictive to least restrictive, are:

(1) - (2) (No change.)

(3) Category C--Expenditure of case service funds authorized for any planned, necessary BCVDD Program services according to the following priorities:

(A) Priority 1--Children who meet the definition of being blind or deafblind.

(B) - (E) (No change.)

[(F) Priority 6--Children who need prosthesis.]

[(G) Priority 7--Children with nonsevere visual losses that affect visual acuity who are in need of services other than correction of a refractive error.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200900989



CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend the DARS rules in Title 40, Part 2, Chapter 108, Division for Early Childhood Intervention Services, by repealing all subchapters (A, B, D, E, and F), and adopting new subchapters: Subchapter A, Early Childhood Intervention Service Delivery; Subchapter B, Procedural Safeguards And Due Process Procedures; Subchapter C, Early Childhood Intervention Staff Qualifications; Subchapter D, General Provisions for Case Management Services for Infants and Toddlers with Developmental Disabilities; Subchapter E, Developmental Rehabilitation Services; Subchapter F, System of Fees; and Subchapter G, Contract Requirements. Specifically, DARS proposes the repeal of §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43, 108.47, 108.48, 108.55, 108.57, 108.59, 108.61, 108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233, 108.235, 108.261, 108.263, 108.265, 108.291, 108.293 and 108.295. DARS proposes new §§108.1, 108.3, 108.5, 108.7, 108.9, 108.11, 108.13, 108.15, 108.17, 108.19, 108.71, 108.73, 108.75, 108.77, 108.101, 108.103, 108.105, 108.107, 108.109, 108.111, 108.113, 108.115, 108.117, 108.119, 108.121, 108.123, 108.125, 108.127, 108.129, 108.131, 108.133, 108.135, 108.137, 108.139, 108.301, 108.303, 108.305, 108.307, 108.309, 108.311, 108.313, 108.315, 108.317, 108.319, 108.321, 108.401, 108.403, 108.405, 108.407, 108.409, 108.411, 108.413, 108.415, 108.501, 108.503, 108.505, 108.601, 108.603, 108.701, 108.703, 108.705, 108.707, 108.709 and 108.711.

Chapter 108 is being extensively restructured and expanded from five subchapters to seven subchapters in order to increase clarity and minimize duplication of or conflicts with federal statutes and rules.

The following subchapters and sections in Title 40, Chapter 108, are to be repealed:

Subchapter A, Early Childhood Intervention Service Delivery, and the following sections are to be repealed: §108.21, Purpose; §108.23, Definitions; §108.25, Service Delivery Requirements for Comprehensive Services; §108.27, Program Administration for Comprehensive Services; §108.29, Application and Program Requirements for Comprehensive Services; §108.31, Financial Management and Recordkeeping Requirements; §108.33, Funding Application Submission and Review; §108.35, Contract Award; §108.37, Contract; §108.39, Contract Actions; §108.43, Waiver of Program Standards for All ECI Providers Funded by the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services; §108.47, Early Intervention Specialist Code of Ethics; and §108.48, Violations of the EIS Code of Ethics. The subject matter of these rules is moved to several of the new subchapters with changes intended to minimize duplication of or conflicts with federal statutes and rules. The subject matter of §108.21 and §108.23 is in new

Subchapter A. Section 108.25 is an extremely long rule, and it has been broken up into separate sections placed in appropriate new subchapters. The subject matter of §108.27 through §108.39 has been moved to new Subchapter G. Section 108.43 is not replaced in any form. The subject matter of §108.47 and §108.48 has been moved to new Subchapter C.

Subchapter B, Procedural Safeguards and Due Process Procedures, and the following sections are to be repealed: §108.55, Procedural Safeguards for Comprehensive Services; §108.57, Early Childhood Intervention Procedures for Resolving Complaints; §108.59, Confidentiality; and §108.61, Primary Referral Requirements. The subject matter of these rules may be found in new Subchapter B along with portions of other repealed rules pertaining to the same matters. The subject matter of §108.55 and §108.57 has been modified to minimize duplication of or conflicts with federal statutes and rules. The subject matter of §108.59 is broken into several new rules.

Subchapter D, General Provisions for Case Management Services for Infants and Toddlers with Developmental Disabilities, and the following sections are to be repealed: §108.221, Introduction; §108.223, Definitions; §108.225, Reimbursable Services; §108.227, Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services; §108.229, Conditions for Case Management Provider Participation; §108.231, Qualified Personnel; §108.233, Retention of Records; and §108.235, Provider Records. New Subchapter D is merely a renumbering of these sections, with minor changes to be consistent with the Medicaid State Plan.

Subchapter E, Developmental Rehabilitation Services, and the following sections are to be repealed: §108.261, Reimbursable Services; §108.263, Recipient Eligibility for Services Funded by the Developmental Rehabilitation Services Program; and §108.265, Conditions for Provider Participation in the Developmental Rehabilitation Services Program. New Subchapter E is a renumbering of these sections with an added definition of natural environment.

Subchapter F, System of Fees, and the following sections are to be repealed: §108.291, Purpose; §108.293, Definitions; and §108.295, Administration of Family Cost Share System. New Subchapter G is a renumbering of these sections with deletion of temporary information from the rules and with definitions being moved to new Subchapter A.

The following are the proposed new subchapters of Chapter 108:

New Subchapter A, Early Childhood Intervention Service Delivery, consists of the following new rules: §108.1, Purpose; §108.3, Definitions; §108.5, Service Delivery Requirements for Early Intervention Services; §108.7, Client Eligibility; §108.9, Primary Referral Requirements; §108.11, Referral and Pre-Enrollment; §108.13, Assessment and Evaluation; §108.15, Health Standards for Early Intervention Services; §108.17, Individualized Family Service Plan (IFSP); §108.19, Required Early Intervention Services; §108.71, Service Coordination; §108.73, Transition; §108.75, Public Outreach; and §108.77, Safety Regulations.

New Subchapter B, Procedural Safeguards and Due Process Procedures, consists of the following new rules: §108.101, Purpose; §108.103, Responsibilities; §108.105, Prior Notice; §108.107, Parental Consent; §108.109, Surrogate Parents; §108.111, Early Childhood Intervention Procedures for Filing Complaints; §108.113, Early Childhood Intervention Procedures for Investigation and Resolution of Complaints; §108.115,

Confidentiality Notice to Parents; §108.117, Access Rights; §108.119, Fees for Records; §108.121, Amendment of Records at Parent's Request; §108.123, Opportunity for a Hearing; §108.125, Minimum Requirements for Conducting a Hearing; §108.127, Results of Hearing; §108.129, Release of Personally Identifiable Information; §108.131, Safeguards; §108.133, Record Retention Period; §108.135, Destruction of Information; §108.137, Release of Records; and §108.139, Enforcement.

New Subchapter C, Early Childhood Intervention Staff Qualifications, consists of the following new rules: §108.301, Staff Health Regulations; §108.303, Professional Requirements; §108.305, Criminal Background; §108.307, Early Intervention Specialist (EIS) Professional; §108.309, Supervision of Entry Level EIS Professionals; §108.311, Fully Qualified EIS Professional Requirements; §108.313, Continuing Professional Education Requirements; §108.315, Registry; §108.317, Grievance Process; §108.319, Early Intervention Specialist Code of Ethics; and §108.321, Violations of the EIS Code of Ethics.

New Subchapter D, General Provisions for Case Management Services for Infants And Toddlers with Developmental Disabilities, consists of the following new rules: §108.401, Introduction; §108.403, Definitions; §108.405, Reimbursable Services; §108.407, Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services; §108.409, Conditions for Case Management Provider Participation; §108.411, Qualified Personnel; §108.413, Retention of Records; and §108.415, Provider Records.

New Subchapter E, Developmental Rehabilitation Services, consists of the following new rules: §108.501, Reimbursable Services; §108.503, Recipient Eligibility for Services Funded by the Developmental Rehabilitation Services Program; and §108.505, Conditions for Provider Participation in the Developmental Rehabilitation Services Program.

New Subchapter F, System of Fees, consists of the following new rules: §108.601, Purpose, and §108.603, Administration of Family Cost Share System.

New Subchapter G, Contract Requirements, consists of the following new rules: §108.701, Application and Program Requirements for Comprehensive Services; §108.703, Contract Award; §108.705, Contract; §108.707, Remedial Contract Actions; §108.709, Financial Management and Recordkeeping Requirements; and §108.711, Data Collection and Reporting. The proposed new Chapter 108, Subchapter G, Contract Requirements, collects portions of several repealed rules that deal with providers, their contracts, and their financial requirements.

The proposed new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and The Individuals with Disabilities Education Act, as amended, 20 U.S.C. §1400 et seq. and its implementing regulations, 34 C.F.R. Part 303, as amended.

Bill Wheeler, Chief Financial Officer, Texas Department of Assistive and Rehabilitative Services, has determined that for each year of the first five years that the proposed rules will be in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Wheeler has determined that for each year of the first five years the proposed rules will be in effect, the public benefit anticipated as a result of enforcing the proposed rules will be the establishment of a process for contractors to assign their contract. Mr. Wheeler has also determined that there is no probable economic cost to persons who are required to comply with the proposed rules.

Further, in accordance with Texas Government Code, §2001.022, Mr. Wheeler has determined that the proposed new rules will not affect a local economy, and, therefore, no local employment impact statement is required. Finally, Mr. Wheeler has determined that the proposed new rules will have no adverse economic effect on small businesses or micro-businesses.

Written comments on the proposed rules may be submitted within 60 days of publication of this proposal in the *Texas Register* to Nancy Mikulencak, Rules Coordinator, Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 200, Austin, Texas 78756 or electronically to Nancy.Mikulencak@dars.state.tx.us.

SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43, 108.47, 108.48

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.21. *Purpose.*

§108.23. *Definitions.*

§108.25. *Service Delivery Requirements for Comprehensive Services.*

§108.27. *Program Administration for Comprehensive Services.*

§108.29. *Application and Program Requirements for Comprehensive Services.*

§108.31. *Financial Management and Recordkeeping Requirements.*

§108.33. *Funding Application Submission and Review.*

§108.35. *Contract Award.*

§108.37. *Contract.*

§108.39. *Contract Actions.*

§108.43. *Waiver of Program Standards for All ECI Providers Funded by the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services.*

§108.47. *Early Intervention Specialist Code of Ethics.*

§108.48. *Violations of the EIS Code of Ethics.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.55, 108.57, 108.59, 108.61

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.55. *Procedural Safeguards for Comprehensive Services.*

§108.57. *Early Childhood Intervention Procedures for Resolving Complaints.*

§108.59. *Confidentiality.*

§108.61. *Primary Referral Requirements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. GENERAL PROVISIONS FOR CASE MANAGEMENT SERVICES FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

40 TAC §§108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233, 108.235

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.221. *Introduction.*

§108.223. *Definitions.*

§108.225. *Reimbursable Services.*

§108.227. *Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services.*

§108.229. *Conditions for Case Management Provider Participation.*

§108.231. *Qualified Personnel.*

§108.233. *Retention of Records.*

§108.235. *Provider Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. DEVELOPMENTAL REHABILITATION SERVICES

40 TAC §§108.261, 108.263, 108.265

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.261. *Reimbursable Services.*

§108.263. *Recipient Eligibility for Services Funded by the Developmental Rehabilitation Services Program.*

§108.265. *Conditions for Provider Participation in the Developmental Rehabilitation Services Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER F. SYSTEM OF FEES

40 TAC §§108.291, 108.293, 108.295

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.291. *Purpose.*

§108.293. *Definitions.*

§108.295. *Administration of Family Cost Share System.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.1, 108.3, 108.5, 108.7, 108.9, 108.11, 108.13, 108.15, 108.17, 108.19, 108.71, 108.73, 108.75, 108.77

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of

health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1. *Purpose.*

This chapter is intended to implement the provisions of the Interagency Council on Early Childhood Intervention Act, Human Resources Code, Chapter 73, the Individuals with Disabilities Education Act, Part C (20 U.S.C. §§1431-1444), and the implementing federal regulations at 34 CFR Chapter 303. This chapter shall be interpreted to be consistent with these statutes and rules to the extent possible. If such an interpretation is not possible for a portion of these rules, the federal statutes and rules shall prevail. The Texas statutes and these rules shall then be given effect to the extent possible.

§108.3. *Definitions.*

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Ability to Pay--The determination that the family is financially able to contribute to the cost of services provided by ECI based on the family's placement on the sliding fee scale. Placement on the scale at an amount greater than \$0 indicates an ability to pay.

(2) Adjusted Income--Gross family income, minus allowable expenses. Adjusted income is used at the parent's request, instead of gross income to determine a family's ability to pay and cost share.

(3) Allowable Expenses--Unreimbursed out-of-pocket expenses, including medical and dental expenses, that can be deducted from gross income, at the request of a parent, to calculate adjusted income for the purpose of determining a family's ability to pay and cost share.

(4) Child Find--Activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(5) CHIP--The Children's Health Insurance Program.

(6) Complaint--A formal written allegation submitted to the Department stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(7) Consent--In addition to the meaning defined at 34 CFR §303.401 and §303.404, consent shall mean the parent(s) understands:

(A) any financial responsibility or other burdens that the family will bear as a result of giving consent;

(B) any possible adverse consequences that could result from denying consent; and

(C) the right to consent to some procedures or services and to refuse others.

(8) Contractor--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from the Department to administer the Early Childhood Intervention (ECI) Program.

(9) Days--Calendar days.

(10) Department--The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. The Department has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The Department has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(11) Developmental Delay--A significant variation in normal development in one or more of the following areas as measured and determined by appropriate diagnostic instruments or procedures administered by an interdisciplinary team and by informed clinical opinion: cognitive development; physical development, including vision and hearing, gross and fine motor skills; communication development; social and emotional development; and adaptive development.

(12) Dual Relationships--Dual relationships occur when the person providing early intervention services engages in activities with the family that goes beyond his or her professional boundaries.

(13) Early Intervention Services--Individualized intervention services, as determined by the interdisciplinary team and listed in the Individualized Family Service Plan (IFSP). Services are further defined in §108.19 of this subchapter (relating to Required Early Intervention Services). Contractors receiving funds from the Department are required to have the capacity to provide or arrange for all early intervention services listed in §108.19 of this subchapter.

(14) Family--A group of individuals in the same household who identify themselves as a family. Family includes parents, adoptive parents, step-parents, children, adult dependents, and other people residing in the household who are considered members of the family. Family member information is used to determine family size and income.

(15) Family Cost Share--The maximum amount of money the family must pay per month based on the family's ability to pay, considering the family's income, family size, and, when applicable, certain other factors as described in the rules.

(16) Family Educational Rights and Privacy Act of 1974 (FERPA)--20 U.S.C. §1232g, as amended, and implementing regulations at 34 CFR Part 99 - Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(17) Full Year Services--The availability of an array of early intervention services throughout the calendar year.

(18) Gross Income--All income received by the family, from whatever source, which is considered to be income by the Internal Revenue Service but before federal allowable deductions are applied. A family's gross income will be used to calculate the family cost share unless the parent requests an adjustment for allowable expenses.

(19) Inability to Pay--The determination that the family is not able to financially contribute to the cost of services provided by ECI. Placement on the sliding fee scale at \$0 indicates an inability to pay.

(20) Individual Professional Development Plan (IPDP)--A written plan for in-service or continuing education to be prepared annually for each staff person in a program.

(21) Interdisciplinary Team--The child's parent(s) and a minimum of two professionals from different disciplines who meet to share evaluation information, determine eligibility, assess needs, and develop the Individualized Family Service Plan (IFSP). The team must include the service coordinator who has been working with the family since the initial referral or the person responsible for implementing the IFSP and a person directly involved in conducting the evaluations and assessments.

(22) Intimate Relationships--Sexual relationships or extremely close and familiar friendships.

(23) Natural Environments--As defined in 34 CFR 303, natural environments mean settings that are natural or normal for the child's age peers who have no disabilities.

(24) Pre-Enrollment--Process that begins with telephone or face-to-face contacts with the child's family to provide information about early intervention and service coordination and to assist the child and family in gaining access to the evaluation and the assessment process. This process establishes potential eligibility for early intervention services, provides a basic introduction to the program's philosophy and operating procedures, gathers information needed for enrollment, and schedules and helps the family prepare for a comprehensive interdisciplinary evaluation and assessment. Pre-IFSP service coordination is provided as needed.

(25) Primary Referral Sources--Individuals or organizations which refer children, including but not limited to all required sources in 34 CFR §303.321.

(26) Professional Boundaries--Professional boundaries are physical and emotional limits to the relationship between the professional providing early intervention services and the family. Professional boundaries help to maintain a relationship that keeps the focus on helping the family.

(27) Program--A division of a contractor with the express and sole purpose of implementing early intervention services to children with developmental delays and their families.

(28) Public Agency--The Department and any other state agency or political subdivision of the state that is responsible for providing early intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(29) Public Health Clinic--Any clinic that provides pediatric physical examinations and receives public funding from federal, state, city, or county governments.

(30) Referral Date--The date the child's name and sufficient information to contact the family was obtained by the local program.

(31) Service Coordinator--A staff person with an ECI contractor who is assigned to a child or family, who is the single contact point for families, and who is responsible for assisting and empowering families to receive the rights, procedural safeguards, and early intervention services authorized by these rules and Department policy and procedures. The service coordinator must be from the profession most relevant to the child's or family's needs, or who is otherwise qualified to carry out all applicable responsibilities.

(32) Sliding Scale--The scale of graduated family cost share amounts developed by DARS for use in determining the family's ability to pay and the maximum cost share a family receiving ECI services may be responsible for based on their income and family size.

(33) SSI--Supplemental Security Income (SSI) is a Federal income supplement program funded by general tax revenues.

(34) Supplanting--The withdrawal or withholding of local, private, or other public funds for services which were or are available for services to children and expenditure of federal ECI funds instead. See 34 CFR §303.124 and 34 CFR Part 81 - Appendix.

(35) Surrogate Parent--The term surrogate parent shall meet the definition and requirements of the Individuals with Disabilities Education Act, Part C.

(36) TANF--The Temporary Assistance for Needy Families (TANF) program within the Office of Family Assistance authorized under the Social Security Act.

(37) TriCare--The Department of Defense managed care program for active duty military and retirees and their families.

(38) UGMS--Uniform Grant Management Standards (UGMS) adopted by the Governor's Office of Budget and Planning pursuant to 1 TAC §§5.141 - 5.151 and §5.167 (relating to Uniform Grant Management Standards) under the authority of Texas Government Code, Chapter 783.

§108.5. Service Delivery Requirements for Early Intervention Services.

Contractors that receive Early Childhood Intervention (ECI) funds for early intervention services must implement all written policies and procedures developed by the Department that are applicable to ECI contractors.

§108.7. Client Eligibility.

(a) The contractor must follow written criteria developed by the Department for determining eligibility for infants and toddlers with disabilities and accepting them into the program.

(b) Early intervention services are available to any child birth to 36 months of age who has a documented developmental delay, or a medically diagnosed condition that has a high probability of resulting in developmental delay, or exhibits atypical development. Determination of eligibility shall be as follows:

(1) Developmental delay: specific level of delay in one or more of the following areas measured and determined by appropriate diagnostic instruments or procedures by an interdisciplinary team and by informed clinical opinion: cognitive development, physical development, communication development, social-emotional development, or adaptive development.

(2) Atypical development: determination must be completed by a qualified professional (i.e., psychologist, occupational therapist, speech therapist, physical therapist, physician, etc.) through administration of an evaluation tool, parental report, and observation of one or more atypical behaviors.

(3) Medically diagnosed condition: must be determined by medical documentation of a specific condition with known etiology and developmental consequences that is included in the list of covered medical conditions approved by the Department. Children with a medically diagnosed condition that is not included in the list of covered medical conditions approved by the Department may still be eligible for early intervention services based on the criteria in paragraphs (1) and (2) of this subsection.

(c) Early childhood intervention services are provided to eligible children in the State including Native American children residing on reservations geographically located in Texas, children who are homeless, wards of the state, and those children authorized for services as visually or auditorially impaired children as defined by the Texas Education Code.

§108.9. Primary Referral Requirements.

All primary referral sources must refer a child under age three who may be in need of and/or qualify for comprehensive early intervention services. Referrals must be within two working days of identification, and must be made to a program for evaluation and assessment of the child. Primary referral sources include:

- (1) hospitals, including prenatal and postnatal care facilities;
- (2) physicians;

- (3) parents;
- (4) child care programs;
- (5) local educational agencies;
- (6) public health facilities;
- (7) other social service agencies; or
- (8) other health care providers.

§108.11. Referral and Pre-Enrollment.

The program must have procedures for receiving and sending referrals using all primary referral sources.

§108.13. Assessment and Evaluation.

(a) The assessment and evaluation for early intervention services must be in accordance with the following criteria and procedures.

(1) Prior to any assessment or evaluation, the parent(s) must be fully informed and give permission regarding the following:

- (A) disciplines or staff to be involved in conducting assessments and evaluations;
- (B) family's role;
- (C) measures to be used;
- (D) when and how the information obtained will be synthesized and shared; and
- (E) who will have access to the information obtained.

(2) If the parent(s) refuses participation in a specific area of an assessment or evaluation, early intervention services may not be denied in other areas.

(3) At no cost to the family, the program must provide a comprehensive, interdisciplinary assessment and evaluation for each child, including assessment activities related to the family.

(4) All assessments and evaluations of the child or family including tests and other evaluative methods and procedures must be:

- (A) conducted by personnel trained to use appropriate methods and procedures;
- (B) administered in the native language of the parent(s) and child or other mode of communication, unless it is clearly not feasible to do so;
- (C) nondiscriminatory in regard to race or culture;
- (D) reviewed on an ongoing basis and updated at a frequency recommended by the interdisciplinary team and the parent(s) must be notified that an annual assessment and evaluation is available to them if they request it;
- (E) based on informed clinical opinion; and
- (F) based on appropriate use of multiple methods and procedures which ensure that no single criterion is utilized to determine delay or atypical development.

(b) Child assessments and evaluations must include in addition to all requirements in 34 CFR §303.322 an evaluation of the following developmental areas:

- (1) vision and hearing, gross and fine motor skills, and nutrition status;
- (2) self-help skills;

(3) an assessment of the child's unique strengths as well as needs in each of the developmental areas;

(4) the identification of services appropriate to meeting those needs; and

(5) parental input.

(c) Identification of the family's concerns, priorities, and resources must be voluntary. If a family agrees, the identification must:

(1) be family directed and designed to determine the concerns, priorities, and resources of the family related to enhancing the child's development; and

(2) be based on information provided by the family.

§108.15. Health Standards for Early Intervention Services.

(a) The Individualized Family Service Plan (IFSP) team will determine if the information is adequate or if the team needs any additional medical information to implement any or all of the strategies in the child's IFSP if the information in the child's records does not include documentation of a physical examination in accordance with the periodicity schedule of the American Academy of Pediatrics.

(b) The IFSP team can at any time request additional medical information and should do so as needed to assure the health and safety of the child.

(c) Children who will be participating in any ECI group activities must have immunizations appropriate to the child's age as recommended by the Texas Department of State Health Services (DSHS). If medical or religious reasons contraindicate immunization requirements, documentation to that effect must be maintained by the program, and the family must be notified that their child could be excluded from group activities if a contagious outbreak occurs.

(d) Child health standards. Contractors that receive ECI funds must have written policies and procedures which are implemented and evaluated in each of the following areas.

(1) Medication policies. If staff is involved in the administration of medication, written policies must be maintained regarding such administration.

(2) Infectious disease prevention and management.

(A) All programs must adhere to the procedures of the universal precautions as defined by the Centers for Disease Control of the United States Public Health Service.

(B) All programs must comply with the Texas Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

(C) In the event of an outbreak of a contagious disease, children attending group activities must be excluded if they have not been immunized due to medical or religious contraindications.

(3) Contractors must follow all federal and state law and regulations regarding providing services and maintaining records for families and children with HIV or other communicable diseases.

§108.17. Individualized Family Service Plan (IFSP).

An Individualized Family Service Plan (IFSP) must be developed for each child eligible for early intervention services and the child's family. Early intervention services must be delivered in conformity with an IFSP.

(1) Procedures for development, review, and evaluation.

(A) The IFSP must be written within 45 days of referral and be developed jointly by the family and appropriate qualified

personnel. The IFSP must be based on assessment and evaluation information and include services necessary to enhance the development of the child and the capacity of the family to meet the child's special needs. No IFSP shall be implemented without prior written consent from the parent(s). The contents and the implementation of the IFSP must be fully reviewed with the parent(s) prior to obtaining their consent.

(B) If early intervention services are delivered to a child by more than one contractor, services must be jointly coordinated.

(2) IFSP participants. An interdisciplinary team must meet to establish eligibility and develop the initial IFSP. The interdisciplinary team must include the following participants:

(A) the parent(s) of the child;

(B) other family members or care providers, when requested by the parent(s);

(C) an advocate or person outside the family, when requested by the parent(s);

(D) a minimum of two professionals from different disciplines. The team must include the service coordinator who has been working with the family since the initial referral or who has been responsible for implementing the IFSP and a professional directly involved in conducting the evaluations and assessments; and

(E) as appropriate, persons who will be providing early intervention services to the child or family.

(3) Contents of the plan. Contractors that receive funds from the Department must have a written IFSP for each child developed jointly by the interdisciplinary team including the child's parent(s).

(A) The IFSP must include an integrated summary of all assessments and evaluations of the child's present levels of physical development (including gross and fine motor skills, nutrition, vision, hearing, and health status), cognitive development, communication (speech-language) development, social-emotional development, and self-help skills or adaptive development. This integrated summary must be based on professionally acceptable criteria.

(B) A description of the child's strengths and needs must be included in the IFSP.

§108.19. Required Early Intervention Services.

(a) The Individualized Family Service Plan (IFSP) shall include all early intervention services, as determined by the interdisciplinary team necessary to enhance the child's development or the family's capacity to meet the developmental needs of the child. These services must be provided under public supervision. With parental consent, the IFSP must also address the resources, priorities, and concerns of the family related to enhancing the child's development.

(b) The IFSP shall include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes expected to be achieved for the child and family. The array of available early intervention services must include, but is not limited to, the following:

(1) service coordination;

(2) early identification, screening, and assessment services, and the other early intervention services;

(3) medical services only for diagnostic or evaluation purposes;

(4) developmental services;

(5) family education;

- (6) speech and language therapy;
- (7) audiology;
- (8) occupational therapy;
- (9) assistive technology devices and assistive technology services;
- (10) physical therapy;
- (11) psychological services;
- (12) family counseling;
- (13) social work services;
- (14) health services necessary to enable the child to benefit from the other early intervention services;
- (15) nursing services;
- (16) transportation;
- (17) nutrition services;
- (18) vision services; and
- (19) other services.

(c) Required services. Each comprehensive program must provide an evaluation and assessment, service coordination, an Individualized Family Service Plan (IFSP), and early intervention services. Each contractor funded by the Department for early intervention services and follow along must have the capacity to provide or arrange for all services described in subsection (b) of this section. All services which the child or family receives, regardless of the funding sources, must be considered toward meeting the service needs of the child as defined in the child's IFSP. No ECI funding can be used to arrange, provide, or duplicate a service for which other funding sources, public or private, are available and could be used.

(d) ECI child service standards in group settings.

(1) Determination of staff-child ratios must take into account the degree of each child's developmental level of functioning, the setting in which the child will be served, and the nature of the early intervention services to be provided.

(2) Contractors which provide child care as defined by the Texas Department of Family and Protective Services (DFPS) must meet licensing standards of DFPS.

(e) Types of services. For the purpose of this chapter, in addition to all required services in 34 CFR §303.13, the following types of services apply.

(1) Developmental services include:

(A) the design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(B) curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP;

(C) providing families with information, skills, and support related to enhancing the skill development of the child; and

(D) working with the child to enhance the child's development.

(2) Service options. Each program must provide options for instruction or intervention, based upon consideration of the medical, social, educational, and developmental needs of the child and the

resources, priorities, and concerns of the family as stated in the IFSP. These options include:

(A) individual services in the home, community or other locations;

(B) group services delivered at a site with other children;

(C) to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including home and community settings in which children without disabilities participate. Natural environments mean settings that are natural or normal for the child's age peers who have no disabilities;

(D) flexible hours in programming which allow options for parents to participate (i.e., working parents);

(E) variable degrees of family involvement in services, as determined by the family.

(3) Availability of services. The contractor must demonstrate the capacity to provide services for a minimum of 52 weeks of each year.

§108.71. Service Coordination.

(a) Service coordination includes activities carried out by a service coordinator to an eligible child and the child's family to assist and empower the family to receive the provisions, procedural safeguards, and services authorized to be provided by this chapter. Activities include but are not limited to:

(1) coordinating the performance of evaluations and assessments;

(2) facilitating and participating in the development, review, and evaluation of the IFSP;

(3) assisting families in identifying available services;

(4) coordinating and monitoring the delivery of available services;

(5) informing families of the availability of advocacy services;

(6) coordinating with medical and health providers; and

(7) facilitating the development of a transition plan to preschool services, if appropriate.

(b) Service coordination services means assistance and services provided by a service coordinator to an eligible child and the child's family that are in addition to the functions and activities of this section and enable the child and the child's family to receive the rights, procedural safeguards, and services provided under this chapter.

(c) One service coordinator must be identified for each eligible child and the child's family.

(1) An initial service coordinator must be assigned at the time of referral. A new service coordinator may be assigned at the time the IFSP is developed or the original service coordinator may be retained, if appropriate. The parents must be given the name and contact information of their assigned service coordinator.

(2) The service coordinator assigned by the interdisciplinary team must be from the profession most relevant to the child's or family's needs, or who is otherwise qualified to carry out all applicable responsibilities.

(3) The service coordinator assigned may not be the parent. In some instances a staff person may share service coordination responsibilities with a parent.

(4) A new service coordinator must be appointed upon request by the parent(s).

(5) The service coordinator is responsible for coordinating all services within the program and between agencies including:

(A) coordinating the performance of evaluations and assessments;

(B) facilitating and participating in development, review, and evaluation of the IFSP and assisting parents of eligible children in gaining access to the early intervention services and other services identified in the IFSP;

(C) monitoring the provision of services to ensure timely delivery of services;

(D) facilitating the development of a transition plan to other services, including but not limited to preschool services when a child leaves the program;

(E) continually seeking appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility; and

(F) coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided.

(6) The service coordinator must serve as the single contact point for parents to help the families with services including:

(A) addressing identified needs and ongoing service requests;

(B) identifying resources and helping parents to choose among and to access these resources;

(C) informing families of advocacy services; and

(D) informing families of complaint procedures.

(7) The contractor must ensure that all persons functioning as service coordinators are knowledgeable:

(A) about infants and toddlers who are developmentally delayed or at risk of delay;

(B) of the Individuals with Disabilities Education Act, Part C; and

(C) about the nature and scope of services available under the Early Childhood Intervention Program on the state and local levels, including eligibility.

§108.73. Transition.

The Individualized Family Service Plan (IFSP) must include the steps to be taken to support the transition of the child to public school preschool services (the Individuals with Disabilities Education Act, Part B), upon reaching the age of three, or to other services that may be available, if appropriate. The steps required include:

(1) discussions with, and training of, the parent(s) regarding future placements and other matters related to the child's transition;

(2) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(3) with parental consent, the transmission of information about the child to the local educational agency or other service providers or agencies, to ensure continuity of services, including evaluation and assessment information, and copies of IFSPs that have been developed; and

(4) with the approval of the family, the convening of a conference among the program, the family, and the local educational agency at least 120 days, but no more than 270 days, before the child's third birthday, or, if earlier, the date on which the child is eligible for the preschool program under the Individuals with Disabilities Education Act, Part B.

§108.75. Public Outreach.

(a) Child find. Each program must develop and implement a child find plan which includes:

(1) ongoing contact and coordination with primary referral sources and other service providers and agencies according to the Department's standards, policies and guidance;

(2) information regarding availability of other local services including other ECI programs; and

(3) accepting referrals for early intervention services and evaluating each child for eligibility within 45 days of the referral.

(b) Public awareness. Each program must develop and implement a public awareness plan which includes:

(1) information on child find, early identification, referral, and access to early intervention services, locally and across the state;

(2) a variety of continuous methods for reaching the general public; and

(3) involvement and communication with public and private agencies; parent, professional, and advocacy groups; and other organizations or associations.

(c) Contractors must implement the use of the ECI logo and slogan and meet requirements listed in the ECI Graphic Standards Manual for all materials used by the ECI program for marketing, public awareness, child find, promotion, public education, and program correspondence related to the ECI program. Contractors must use "ECI" as part of their program name.

(d) The ECI logo and slogan are for use by contractors under contract with the Department or by entities not under contract when directed or authorized by the Department. All use must be in accordance with the ECI Graphic Standards Manual.

(e) Interagency coordination. Each program must develop and implement an interagency coordination plan which includes, as a minimum, procedures to:

(1) prevent duplication of assessments and services;

(2) coordinate referrals to and from ECI programs;

(3) participate in local and regional planning and coordination of groups affecting services to young children; and

(4) coordinate activities to make the most effective use of staff development and early intervention service provision.

§108.77. Safety Regulations.

(a) Contractors must have written policies and procedures which are implemented and evaluated to address safety regulations regarding emergencies for all buildings where ECI programs are housed.

(b) Accessibility and safety. Contractors must have written policies and procedures which are implemented and evaluated in the following areas.

(1) All ECI services must be available in buildings that are physically accessible to persons with disabilities.

(2) Buildings where the ECI program is housed (including offices) must be inspected annually by a local or state fire authority. A safety and sanitation inspection must be completed annually. If the fire or safety and sanitation inspection indicates that hazards exist, these hazards must be corrected.

(3) Buildings must be clean, free of hazards, free of insect and rodent infestation, in good repair, with adequate light, ventilation, and temperature control.

(4) An external emergency release mechanism must be provided for opening interior doors that can be locked from the inside. Locks may not be used to restrain a child within a room.

(5) Buildings must be able to be safely evacuated in the event of an emergency.

(c) Transportation safety. Contractors must have written policies and procedures which are implemented and evaluated in the following areas.

(1) The transportation system operated by the ECI program must meet local and state licensing, inspection, insurance, and capacity requirements.

(2) Children must be transported in an appropriately installed, federally approved child passenger restraint seat, appropriate to the child's age and size.

(3) Drivers of vehicles must have valid and appropriate drivers' licenses. Drivers must have current defensive driving certification.

(4) Drivers and drivers' aides must have training in first aid, emergency care of seizures, and be certified in cardiopulmonary resuscitation for children and infants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 424-4050



SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.101, 108.103, 108.105, 108.107, 108.109, 108.111, 108.113, 108.115, 108.117, 108.119, 108.121, 108.123, 108.125, 108.127, 108.129, 108.131, 108.133, 108.135, 108.137, 108.139

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531,

§531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.101. Purpose.

The purpose of this subchapter is to describe general requirements for procedural safeguards pertaining to the delivery of early intervention services.

§108.103. Responsibilities.

Each contractor shall be responsible for:

(1) establishing or adopting procedural safeguards that meet the requirements of the federal and state regulations;

(2) ensuring effective implementation of the safeguards; and

(3) providing oral and written explanation to the parent(s) regarding procedural safeguards during the pre-enrollment process and at other times when parental consent is required.

§108.105. Prior Notice.

Content of notice. In addition to the requirements in 34 CFR §303.403, the notice must be in sufficient detail to inform the parent(s) about:

(1) the issues to be considered and the reasons for taking these actions; and

(2) each record or report used as a basis for consideration.

§108.107. Parental Consent.

(a) In addition to the requirements in 34 CFR §303.404, written parental consent must be obtained before:

(1) changing service delivery; or

(2) releasing personally identifiable information as allowed by §108.129 of this subchapter (relating to Release of Personally Identifiable Information).

(b) The contractor must adopt procedures designed to encourage the parent(s) to consent to recommended assessment or evaluation procedures and to recommended services that the parent(s) have refused. The procedures may include:

(1) providing the parent(s) relevant literature or other materials; and

(2) offering the parent(s) peer counseling to enhance their understanding of the value of early intervention and to allay their concerns about participation in Part C programs.

(c) If a specific assessment or service is determined necessary by the IFSP team, the contractor may not limit or deny that assessment or service because the parent(s) has refused consent for another service or assessment.

§108.109. Surrogate Parents.

(a) Each contractor shall ensure that the rights of children eligible under this part are protected if:

(1) no parent can be identified;

(2) the contractor, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) the child is a ward of the state under the laws of Texas.

(b) The duty of the contractor includes the assignment of an individual to act as a surrogate parent for the child in a way consistent with existing state laws and regulations. This must include a method for:

- (1) determining whether a child needs a surrogate parent;
- (2) assigning a surrogate parent to the child; and
- (3) providing training to ensure that the surrogate parent fully understands their role and responsibilities to represent the best interest of the child.

(c) Criteria for selecting surrogates are as follows.

(1) A person selected as surrogate must have no interest that conflicts with the interests of the child represented.

(2) A person assigned as a surrogate parent must not be an employee of any state agency or a person or an employee of a person providing early intervention services to the child or any family member of the child.

(3) A person who qualifies to be a surrogate parent must not be an employee solely because he or she is paid to serve as a surrogate parent.

(4) A person selected as a surrogate parent must have knowledge and skills that ensure adequate representation of the interests of the child.

(5) The requirements of paragraphs (1) - (4) of this subsection ensure that the surrogate parent does not hold a job or a position that would either bias the decisions made for the child or make the surrogate parent vulnerable to the possibility of administrative retaliation for the execution of their responsibilities.

(d) A surrogate parent may represent a child in all matters related to:

- (1) the evaluation and assessment of the child;
- (2) development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
- (3) the ongoing provision of early intervention services to the child; and
- (4) any other rights established under this section.

§108.111. Early Childhood Intervention Procedures for Filing Complaints.

(a) An individual or organization may file a complaint with the Department alleging that a requirement of the Individuals with Disabilities Education Act, Part C (Act) or applicable federal and/or state regulations has been violated. The complaint must be in writing, be signed, and include the nature of the violation and a statement of the facts on which the complaint is based.

(b) A complaint may be filed directly with the Department without having been filed with the contractor or local program.

(c) The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because--

- (1) the alleged violation continues for that child or other children; or
- (2) the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

(d) Procedures for receipt of complaint are as follows.

(1) All complaints received by the Department concerning early intervention services shall be forwarded to the Assistant Commissioner, Division for Early Childhood Intervention Services. The Assistant Commissioner will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a five-year period.

(2) A complaint should be clearly distinguished from a request for an administrative hearing under Chapter 101, Subchapter J, Division 3 of this title and from a request for a hearing concerning the requirements of FERPA under §108.123 of this subchapter (relating to Opportunity for a Hearing).

§108.113. Early Childhood Intervention Procedures for Investigation and Resolution of Complaints.

(a) After receipt of the complaint, the Assistant Commissioner will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to the Assistant Commissioner for resolution of the complaint. The child's and family's confidentiality is protected during the complaint resolution process.

(1) The complainant will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(2) All relevant information will be reviewed and an independent determination made as to whether a violation to the requirements of the Act occurred.

(b) Within 60 days of the receipt of the complaint, the Assistant Commissioner must resolve the complaint.

(c) An extension of the time limit under subsection (b) of this section shall be granted only if exceptional circumstances exist with respect to a particular complaint.

(d) Complainants shall be informed in writing of the final decision of the Assistant Commissioner and of their right to request the secretary of the United States Department of Education to review the final decision of the Assistant Commissioner. The Assistant Commissioner's written decision to the complainant will address each allegation in the complaint and contain:

- (1) findings of fact and conclusions; and
- (2) reasons for the final decision.

(e) To ensure effective implementation of the Assistant Commissioner's final decision and to achieve compliance with any corrective actions, the Assistant Commissioner will assign a staff person to provide technical assistance and appropriate follow-up to the parties involved in the complaint as necessary.

(f) In resolving a complaint in which it finds a failure to provide appropriate services, the Assistant Commissioner will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and appropriate future provision of services for all infants and toddlers with disabilities and their families.

(g) When a complaint is filed, the Assistant Commissioner, Division for Early Childhood Intervention Services will offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree. A parent's right to a due process hearing or complaint investigation will not be denied or delayed because they chose to participate in mediation. The complaint investigation will continue and be resolved within 60 days even if mediation is used as the resolution process.

(h) If a written complaint is received that is also the subject of a due process hearing under 34 CFR §303.420 or under §108.123 of this subchapter (relating to Opportunity for a Hearing), or contains multiple issues, of which one or more are part of that hearing, the part of the complaint that is being addressed in that hearing is set aside until the conclusion of the hearing. However, any issue in the complaint that is not a part of such action must be resolved within the 60-calendar-day timeline using the complaint procedures.

§108.115. Confidentiality Notice to Parents.

The Department and each contractor providing early intervention services have the following responsibilities in regard to confidentiality of information.

(1) The Department shall develop a document which is adequate to fully inform parents about the following requirements:

(A) a description of the extent to which the notice is given in the native languages of the various population groups in the state;

(B) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the department intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(C) a summary of the policies and procedures which participating contractors must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(D) a description of all of the rights of parents and children regarding this information, the Family Educational Rights and Privacy Act, and implementing regulations.

(2) Confidentiality and procedural safeguards. Each contractor shall distribute the document developed by the department to all parents and ensure that they are fully informed about requirements related to confidentiality and procedural safeguards.

§108.117. Access Rights.

(a) The parent(s) of a child eligible under this chapter must be afforded the opportunity to inspect and review any Early Childhood Intervention (ECI) records relating to evaluations and assessments, eligibility determination, development and implementation of Individualized Family Service Plan (IFSPs), individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family. Records are the records covered by the Family Educational Rights and Privacy Act of 1974, as amended, Title 20, United States Code Annotated, §1232g. Any participating agency, institution, or program which collects, maintains, or uses personally identifiable information from which information is obtained for the purpose of determining eligibility for or providing early intervention services will be subject to these provisions. The contractor shall comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to the identification, evaluation, or placement of the child, and in no case, more than 45 days after the request has been made.

(b) The right to inspect and review records under this section includes:

(1) the right to a response from the participating contractors to reasonable requests for explanations and interpretations of the records;

(2) the right to request that the contractor provide copies of the records containing the information if failure to provide those

copies would effectively prevent the parent(s) from exercising the right to inspect and review the records; and

(3) the right to have a representative of the parent(s) inspect and review the records.

(c) Contractors may presume that the parent(s) has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(d) Record of access. Each contractor shall keep a record of parties obtaining access to service records collected, maintained, or used under this chapter (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(e) Records on more than one child. If any record includes information on more than one child, the parent(s) of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(f) List of types and locations of information. Each contractor shall, on request, provide the parent(s) a list of the types and locations of service records collected, maintained, or used by the contractor.

§108.119. Fees for Records.

(a) Contractors may charge a fee for copies of records which are made for the parent(s) under this section if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(b) Contractors may not charge a fee to search for or to retrieve information under this section.

§108.121. Amendment of Records at Parent's Request.

(a) A parent who believes that information in records collected, maintained, or used under this section is inaccurate or misleading or violates the privacy or other rights of the child, may request the contractor which maintains the information to amend the information.

(b) The contractor decides whether to amend the information in accordance with the request within 30 days.

(c) If, after review of the request, the contractor decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the record accordingly and informs the parent in writing.

(d) If the contractor refuses to amend the information in accordance with the request, it informs the parent of the refusal, and advises the parent of the right to a hearing conducted in accordance with the requirements of the Family Educational Rights and Privacy Act (FERPA).

§108.123. Opportunity for a Hearing.

The contractor shall, on request, provide an opportunity for a hearing to challenge information in service records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. This hearing must be conducted with the requirements of the FERPA.

§108.125. Minimum Requirements for Conducting a Hearing.

The hearing must meet at a minimum the following FERPA requirements.

(1) The contractor must hold the hearing within 30 days after it has received the request for the hearing from the parent(s).

(2) The contractor must give the parent(s) notice of the date, time, and place, reasonably in advance of the hearing.

(3) The hearing may be conducted by any individual including an official of the contractor, who does not have a direct interest in the outcome of the hearing.

(4) The contractor must give the parent(s) a full and fair opportunity to present evidence relevant to the issues under FERPA, including, but not limited to, FERPA regulations at 34 CFR §99.21. The parent(s) may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(5) The contractor must make its decision in writing within 30 days.

(6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

§108.127. Results of Hearing.

(a) If, as a result of the hearing, the contractor decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or family, it must amend the information accordingly and so inform the parent(s) in writing.

(b) If, as a result of the hearing, the contractor decides that the information is accurate and not misleading or otherwise in violation of the privacy or other rights of the child or family, it must inform the parent(s) of the right to place in the record it maintains on the child or family, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the contractor.

(c) Any explanation placed in the records of the child or family under this section must:

(1) be maintained by the contractor as part of the records of the child or family as long as the record or contested portion is maintained; and

(2) if the records of the child or family or the contested portion is disclosed by the contractor to any party, the explanation must also be disclosed to the party.

§108.129. Release of Personally Identifiable Information.

(a) Unless authorized to do so under 34 CFR §99.31, parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of ECI participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent(s) provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent(s) must be informed of their right to refuse to sign the release. Notice of the right to refuse should appear on the release form;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent(s) must be given the opportunity to limit the information provided under the release and to limit the agencies, providers, and persons with whom information may be shared. The release form must provide ample space for the parent(s) to express in writing such limitations;

(4) the release must be revocable at any time;

and
(5) the release must be time-limited not to exceed one year;

(6) if the parent(s) refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

§108.131. Safeguards.

(a) Contractors shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official for each contractor shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

(d) Each contractor must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(e) Each public agency and contractor must keep a log, accessible to the parent(s), of all disclosures of confidential information made pursuant to a general release executed by the parent(s).

§108.133. Record Retention Period.

Unless a longer period is required by state or federal law, the contractor must retain records for five years after the child has been dismissed from services.

§108.135. Destruction of Information.

(a) The program must inform the parent(s) when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child and family.

(b) The information must be destroyed upon request of the parent(s); however, a permanent record of the child's name, address, phone number, attendance record, services received, and years completed and dismissed may be maintained without time limitation.

(c) "Destruction", as used in this section, means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

§108.137. Release of Records.

(a) With the parent's informed consent, confidential Part C records may be provided to the public schools when the child is enrolled in school. If the parent(s) refuses to consent, confidential Part C records may not be intermingled with public school records, including records relating to special education.

(b) An agency or provider may not, without the parent's prior informed consent, redisclose confidential information obtained from another agency or provider, unless such redisclosure is permitted under the terms of the original disclosure made to the agency or provider.

§108.139. Enforcement.

The lead agency will ensure that all policies and procedures related to confidentiality and procedural safeguards will be enforced through supervision and monitoring.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2009.
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**SUBCHAPTER C. EARLY CHILDHOOD
INTERVENTION STAFF QUALIFICATIONS**

**40 TAC §§108.301, 108.303, 108.305, 108.307, 108.309,
108.311, 108.313, 108.315, 108.317, 108.319, 108.321**

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.301. Staff Health Regulations.

(a) Contractors must have written policy and procedures related to staff health regulations which are implemented and evaluated to protect the health and safety of families and children.

(b) Staff development for health and safety issues. Contractors must have written policies and procedures which are implemented and evaluated in the following areas.

(1) All staff who work directly with children must receive training in first aid and emergency care of seizures and be certified in cardiopulmonary resuscitation for children and infants.

(2) All staff who work directly with children must receive training as directed by the Department in recognition of common childhood illnesses and universal precautions as defined by the Centers for Disease Control of the United States Public Health Service.

§108.303. Professional Requirements.

(a) Contractors must employ staff who meet the appropriate professional requirements and hold current professional credentials for their profession. Appropriate professional requirements are the entry level professional standards which:

(1) are based on the state's highest requirements applicable to the profession or discipline in which a person is providing early intervention services; and

(2) establish suitable qualifications for personnel providing early intervention services to eligible children and their families, who are served by state, local, and private agencies.

(b) ECI professional staff must abide by the licensure or certification requirements and the established rules of supervision and conduct for their professions.

(c) For the occupational categories for which state authority has not established professional standards, contractors must employ staff who are qualified in terms of education and experience for their assigned scopes of responsibilities and provide the required degree of supervision.

(d) In-service education. Each contractor shall annually assess and address the training needs of the early childhood intervention staff.

Documentation of the development and implementation of each staff member's individualized professional development plan (IPDP) shall be maintained by the contractor.

(e) The director of the local ECI program must provide and document the amounts of appropriate supervision for all ECI contract staff and program staff to ensure the philosophy and intent of these regulations are met as adopted by the Department.

§108.305. Criminal Background.

Contractors must establish a procedure to ensure that employees have not been convicted of any felony or a misdemeanor related to child abuse or sexual abuse or any other offense against a person or family.

§108.307. Early Intervention Specialist (EIS) Professional.

(a) Definition. EIS Professional is an occupational title and occupational category specific to professionals employed by contractors with the Department. These professionals have demonstrated through their education and experience the knowledge and skills required in early intervention service delivery.

(b) Classes. The two classes of EIS Professionals are Entry Level Early Intervention Specialist Professional and Fully Qualified Early Intervention Specialist Professional.

(c) Scope of Responsibilities. Entry Level EIS Professionals and Fully Qualified EIS Professionals may represent the discipline of early childhood intervention and may be one of the two required professionals on an Interdisciplinary Team (IDT). EIS Professionals may conduct family pre-enrollment processes; participate in determining eligibility, conduct developmental screenings, evaluations and assessments, participate in the development and implementation of Individualized Family Service Plans, and provide service coordination, developmental services, and family education services.

§108.309. Supervision of Entry Level EIS Professionals.

The Entry Level EIS Professionals must receive a minimum of one hour per week of direct supervision from a fully qualified professional until successful completion of the requirements to be a Fully Qualified EIS Professionals. The supervising professionals may be from any of the disciplines related to early intervention and must meet the highest state standards for their profession.

§108.311. Fully Qualified EIS Professional Requirements.

To be recognized as a Fully Qualified EIS Professional an individual must:

(1) meet the educational requirements of a bachelor's degree which includes a minimum of 18 hours of course credit relevant to early intervention service provision and submit a statement of intent to complete the required demonstrations of early intervention knowledge and skills and apply for full professional recognition;

(2) within nine months of date of hire, submit a progress report of the demonstration of early intervention knowledge and skills signed by an ECI program director and supervisor;

(3) within two years of date of hire, complete the Competency Demonstration System and submit documentation to the Department; and

(4) complete the required processes in paragraphs (1) and (2) of this section, or lose professional status and privileges. Loss of professional status means the individual will no longer be able to independently perform the scope of responsibilities of an EIS Professional.

§108.313. Continuing Professional Education Requirements.

(a) EIS Professionals must meet annual continuing professional education requirements to maintain their status. Continuing professional education consists of the planned individual learning experiences as described in the EIS Professional's annual Individual Professional Development Plan (IPDP), which shall include completion of a minimum of ten contact hours of approved continuing professional development education experiences. In addition, EIS Professionals must obtain three hours of training in ethics every two years.

(b) EIS Professionals must submit annually the record of their continuing education on or before the anniversary of the certificate date. Failure to submit the record of continuing education by the anniversary date will result in a loss of professional status and privileges.

§108.315. Registry.

The Department shall issue certificates of recognition to and maintain a registry of individuals who are enrolled in and successfully complete the requirements to be Fully Qualified EIS Professionals. Information and documentation in the EIS Registry is subject to the Public Information Act.

§108.317. Grievance Process.

Each contractor shall have a procedure for local resolution of personnel grievances. A party who has a disagreement with the local decision regarding his qualifications or status as an EIS Professional shall have an opportunity for dispute resolution at the local level. Contractors may use existing personnel grievance procedures to resolve disagreements and will inform their staff of their existence.

§108.319. Early Intervention Specialist Code of Ethics.

An Early Intervention Specialist (EIS) must observe and comply with the following standards of conduct in the EIS code of ethics.

(1) EISs must know and comply with both their program's policies and the Department's policies, procedures, and standards.

(2) EISs must operate only within the boundaries provided by their education, training and credentials.

(3) EISs must take measures to avoid imposing or inflicting harm.

(4) EISs must truthfully represent their services, professional credentials, and qualifications. EISs must inform families of the scope and limitations of their credentials.

(5) EISs must strive to maintain and improve their professional knowledge, skills, and abilities.

(6) EISs must maintain the confidentiality of families served by the ECI Program in accordance with the Department's policies, procedures, and standards.

(7) EISs must establish professional boundaries and avoid establishing dual relationships or conflicts of interest with families. Any prior relationships with a family member must be reported to the EIS's supervisor immediately.

(8) Sexual or intimate relationships are prohibited between EIS and family members of children enrolled in the ECI program that employs the EIS and up to three years after the child "exits" the ECI program.

(9) Financial relationships between EIS and family members of children enrolled in the ECI program that employs the EIS are prohibited until the child "exits" the ECI program.

(10) EISs must not exploit their position of trust and influence with a family by benefiting from relationships established as an EIS.

(11) EISs must not provide direct service while impaired, including impairments that are due to the use of medication, illicit drugs, or alcohol.

(12) EISs must not falsify documentation.

(13) EISs must not refuse to provide services for which they are credentialed on the basis of a child's and/or family's gender, race, ethnicity, color, religion, national origin, sexual orientation, or political affiliation, and they must not refuse to provide services for which they are credentialed solely on the basis of a child's or family's socioeconomic status or disability.

(14) EISs must make reasonable efforts to ensure that families receive appropriate services when the EISs are unavailable or anticipate that they will no longer be employed with the contractor.

(15) EISs have a professional obligation to report unethical behavior demonstrated by colleagues throughout the ECI system to their program director and to the appropriate board or state agency.

§108.321. Violations of the EIS Code of Ethics.

(a) An EIS who violates any of the standards outlined in §108.319 of this subchapter (relating to Early Intervention Specialist Code of Ethics), is subject to his or her employer's disciplinary procedures. Additionally, the EIS's employer must complete an EIS Code of Ethics Incident Report and send a copy to the Department.

(b) The EIS Code of Ethics Incident Report is kept in the EIS's Registry file at DARS Division for Early Childhood Intervention Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER D. GENERAL PROVISIONS FOR CASE MANAGEMENT SERVICES FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

40 TAC §§108.401, 108.403, 108.405, 108.407, 108.409, 108.411, 108.413, 108.415

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.401. Introduction.

Targeted Case Management Services for Infants and Toddlers with Developmental Disabilities are included in the Texas Medical Assistance

Program (Medicaid). The general operation of the Texas Early Childhood Intervention (ECI) program is governed by the Department of Assistive and Rehabilitative Services.

§108.403. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Assessment--The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility to identify:

(A) the child's unique needs and strengths;

(B) the family's strengths and needs related to their child's development; and

(C) the nature and extent of intervention services needed by the child and the family in order to assess subparagraphs (A) and (B) of this paragraph.

(2) Department--The entity designated as the lead agency by the Governor under 20 U.S.C. §§1431 - 1444. The Department of Assistive and Rehabilitative Services has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The Department has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(3) Caregiver--A person, such as a parent, foster parent, grandparent, child-care worker, who has responsibilities for the care of a child.

(4) Case management--Services provided to assist eligible individuals in gaining access to needed medical, social, educational, developmental, and other appropriate services.

(5) Case manager (service coordinator)--An Early Childhood Intervention (ECI) local program staff person who is assigned to a child and family, who is the single contact point for families, and who is responsible for assisting and empowering families in accessing services and coordinating those services.

(6) Developmental delay--A significant variation in normal development in one or more of the following areas as measured and determined by appropriate diagnostic instruments and procedures by an interdisciplinary team and by informed clinical opinion: cognitive development; physical development, including vision and hearing, gross and fine motor skills, and nutrition status; communication development; social and emotional development; and adaptive development or self-help skills.

(7) Developmental disability--Children from birth to age three who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(8) ECI--The Texas Early Childhood Intervention Program.

(9) Early Childhood Intervention (ECI) services--Individualized intervention services provided to children from birth to age three, and their families, as:

(A) determined by the interdisciplinary assessment and listed in the individualized family services plan; and

(B) provided in accordance with the rules of the Department in this chapter.

(10) Individualized Family Service Plan (IFSP)--A written plan, developed by the interdisciplinary team, based on all assessment and evaluation information and including the family's description of their strengths and needs, which outlines the intervention services for the child and the child's family.

(11) Interdisciplinary team--The child's parent(s) and a minimum of two professionals from different disciplines who meet to share evaluation information, determine eligibility, assess needs, and develop the Individualized Family Service Plan (IFSP). The team must include the case manager (service coordinator) who has been working with the family since the initial referral, or the person responsible for implementing the IFSP, and a person directly involved in conducting the evaluations and assessments.

(12) Intake--Process that begins with telephone or face-to-face contacts with the child's family to provide information about early intervention and case management and to assist the child and family in gaining access to the evaluation and the assessment process. This process establishes potential eligibility for ECI services, provides a basic introduction to the program's philosophy and operating procedures, gathers information needed for enrollment, and schedules and helps the family prepare for a comprehensive interdisciplinary evaluation and assessment. Pre-Plan of Care service coordination is provided as needed.

(13) Monitoring--Periodic tracking, observation and follow up to ensure that services have been delivered, that services have been delivered on a timely basis, and that the services are addressing the clients' needs. Monitoring and follow up activities are conducted as needed and are documented in the child's case folder.

(14) Needs assessment--The needs assessment is conducted and documented by the case manager in conjunction with the Medicaid client's family. The documentation lists medical, social, nutritional, educational, developmental, and other appropriate needs of the Medicaid client. Individuals found not to be eligible for early intervention services, or whose families choose not to enroll in early intervention services are to be referred to any appropriate alternative care or services.

(15) Plan of care--Information gathered from the comprehensive needs assessment is incorporated into an Individualized Family Service Plan of care (IFSP). With family consent, family concerns, priorities and resources are identified and documented in the plan. The plan summarizes assessment results, includes the services necessary to enhance the development of the child and the capacity of the family to meet the child's unique needs, and must be coordinated with other service providers involved in delivery of services to the child and family.

(16) Reassessment and Transition Planning--A reassessment of the client's progress and needs is conducted at least every six months. The case manager documents the reassessment in the client's case folder. At reassessment the case manager will determine if modifications to the service plan are necessary and if the level of involvement by the case manager should be adjusted. When services are no longer needed, or the child no longer qualifies for services, the case manager facilitates the planning, coordination, and transition to other appropriate care.

(17) Service coordination--Through linkage, coordination, facilitation, assistance, anticipatory guidance, and the provision of information about the child's medical needs to other health care providers, the case manager ensures the recipient's access to the care, resources and services to meet the client's needs. The case manager may assist the family in making applications for services, confirm service delivery dates with ECI staff, providers and supports, and assist the family with scheduling needs. The case manager assists the family in taking responsibility for ensuring that services are performed,

and works with medical providers, ECI staff, and other community resources to coordinate care.

(18) Texas Health Steps--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. It includes the State's Comprehensive Care Program extension to EPSDT.

(19) Time and Financial Information (TAFI)--A combined cost report and time study report, collected quarterly from providers.

§108.405. Reimbursable Services.

(a) Targeted Case management services are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §108.409 of this subchapter (relating to Conditions for Case Management Provider Participation). Reimbursable case management services include contacts with the child's caregiver on behalf of the child, or with other service providers or professionals on behalf of the child, for the purpose of assisting that child in gaining access to needed medical, social, educational, developmental, and other appropriate services.

(b) Case management services are not reimbursable as Medicaid services when another payor is liable for payment or if case management services are associated with the proper and efficient administration of the state plan. Case management services associated with the following are not payable as optional targeted case management services under Medicaid:

- (1) Medicaid eligibility determinations and redeterminations;
- (2) Medicaid eligibility intake processing;
- (3) Medicaid preadmission screening;
- (4) Prior authorization for Medicaid services;
- (5) Required Medicaid utilization review;
- (6) Texas Health Steps program administration;
- (7) Medicaid "lock-in" provided for under the Social Security Act, §1915(a);
- (8) Services that are an integral or inseparable part of another Medicaid service;
- (9) Outreach activities that are designed to locate individuals who are potentially eligible for Medicaid; and
- (10) Any medical evaluation, examination, or treatment billable as a distinct Medicaid-covered benefit. However, referral arrangements and staff consultation for such services are reimbursable as case management services.

§108.407. Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services.

In order to receive ECI case management services, the recipient must meet the following criteria:

- (1) be eligible for Medicaid services during the month that the services are provided, and
- (2) have a developmental delay, as defined in §108.403 of this subchapter (relating to Definitions). ECI providers must determine developmental delay based on the criteria described in subparagraphs (A) - (C) of this paragraph:
 - (A) Children are eligible who have a medically diagnosed physical or mental condition that has a high probability of re-

sulting in developmental delay and is included in the list of covered medical conditions approved by the Department.

(B) Children are eligible who are delayed in one or more of the following areas of development: cognitive, motor, communication, social-emotional, or adaptive skills. Eligibility must be verified by the determination of the specific level of delay by a test performance on a validated comprehensive developmental inventory or standardized test.

(C) A qualified professional must observe and document atypical development during:

- (i) Administration of an assessment tool, or
- (ii) Informal testing procedures in a variety of settings.

§108.409. Conditions for Case Management Provider Participation.

In order to be reimbursed for Early Childhood Intervention (ECI) services as specified in §108.405 of this subchapter (relating to Reimbursable Services), a provider must:

- (1) be certified by the Texas ECI program as meeting the standards for service providers established by the Texas Early Childhood Intervention Program Services, as specified in this chapter;
- (2) comply with all applicable federal and state laws and regulations governing the services provided;
- (3) ensure that services are provided by appropriately qualified staff as specified in §108.411 of this subchapter (relating to Qualified Personnel);
- (4) be enrolled and approved for participation as a provider in the Texas Medical Assistance (Medicaid) Program;
- (5) sign a written provider agreement with ECI or its designee;
- (6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by ECI or its designee; and
- (7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by ECI or its designee.

§108.411. Qualified Personnel.

Early Childhood Intervention (ECI) case management services must be provided by case managers who meet the educational and work experience requirements, commensurate with their job responsibilities, as specified in §108.407 of this subchapter (relating to Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services); staff qualifications standards developed by the Department; and who have also completed the ECI Case Management Curriculum.

§108.413. Retention of Records.

Providers of Early Childhood Intervention (ECI) services must maintain and retain all necessary records and claims, as specified in §108.415 of this subchapter (relating to Provider Records), to fully document the services and supplies provided to a Medicaid recipient. These records must be made available promptly upon request to the Texas Early Childhood Intervention Program (ECI), the Texas attorney general's office, the Department's designee, and representatives of the United States Department of Health and Human Services. Upon request, the provider must submit copies of their records, at no cost, to representatives of the agencies specified in this section.

§108.415. Provider Records.

(a) A provider must allow DARS and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents pertaining to Medicaid services provided. The provider and the subcontractors must make these documents available at reasonable times and for reasonable periods.

(b) The provider must keep financial and supporting documents, statistical records, and any other records pertinent to the Medicaid services for which a claim or Time and Financial Information (TAFI) report was submitted to ECI or its agent. The records and documents must be kept for a minimum of five years after the end of the contract period or for five years after the end of the federal fiscal year in which services were provided (if a provider agreement/contract has no specific termination date in effect). If any litigation, claim, or audit involving these records begins before the five year period expires, the provider must keep the records and documents for not less than five years or until all litigation, claims, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or ECI and provider enter into a written agreement. In this section, contract period means the beginning date through the ending date specified in the original agreement/contract; extensions are considered separate contract periods.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER E. DEVELOPMENTAL REHABILITATION SERVICES

40 TAC §§108.501, 108.503, 108.505

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.501. Reimbursable Services.

(a) Services that are covered under the Developmental Rehabilitation Services Program are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §108.505 of this subchapter (relating to Conditions for Provider Participation in the Developmental Rehabilitation Services Program). Developmental Rehabilitation Services are diagnostic, evaluative, and consultative services for the purposes of identifying or determining the nature and extent of, and rehabilitating an individual's medical or other health-related condition. They are medical and/or remedial services that integrate therapeutic interventions into the daily routines of the child and family in order to restore or maintain function and/or

to reduce dysfunction resulting from a mental or physical disability or developmental delay. Services are designed to enhance development in the physical/motor, communication, adaptive, cognitive, social or emotional and sensory domains, or to teach compensatory skills for deficits that directly result from medical, developmental or other health-related conditions. Developmental Rehabilitation Services are provided as specified in the active Individualized Family Service Plan (IFSP) developed in accordance with 40 TAC §108.5 of this chapter (relating to Service Delivery Requirements for Comprehensive Services). The services include:

(1) developmentally appropriate individualized skills training and support to foster, promote, and enhance child engagement in daily activities, functional independence, and social interaction;

(2) assistance to caregivers in the identification and utilization of opportunities to incorporate therapeutic intervention strategies into daily life activities that are natural and normal for the child and family;

(3) continuous monitoring of child progress in the acquisition and mastery of functional skills to reduce or overcome limitations resulting from disability or developmental delays.

(b) The services listed in subsection (a)(1) - (3) of this section are performed by or under the supervision of a licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselors, or licensed master social workers-advanced clinical practitioners acting within their scope of practice. Supervision in this section means participation in the initial and annual comprehensive assessment of the child as well as participation in the initial and annual development of the IFSP and any subsequent revisions of the plan that result in service changes.

(c) Developmental Rehabilitation Services are not reimbursable as Medicaid services when:

(1) provided to children with a diagnosis of a developmental disability defined as a severe, chronic disability of a person which:

(A) is attributable to mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency, or a diagnosis of mental retardation; or

(2) the services are guaranteed under the provisions of Individuals with Disabilities Education Act (IDEA) Part B.

§108.503. Recipient Eligibility for Services Funded by the Developmental Rehabilitation Services Program.

In order to receive Developmental Rehabilitation Services the recipient:

(1) must be enrolled in the Texas Medical Assistance Program;

(2) must be age 21 and under;

(3) must demonstrate the need for these services as documented in an active Individualized Family Service Plan (IFSP) developed in accordance with 40 TAC §108.5 of this chapter (relating to Service Delivery Requirements for Comprehensive Services).

§108.505. Conditions for Provider Participation in the Developmental Rehabilitation Services Program.

(a) In accordance with the regulations at 42 CFR §431.51, all willing and qualified providers may participate in this program.

(b) In order to be reimbursed for developmental rehabilitation services as specified in §108.501 of this subchapter (relating to Reimbursable Services), a provider must:

(1) meet applicable state and federal laws governing the participation of providers in the Medicaid Program;

(2) sign a provider agreement with the Medicaid single state agency;

(3) be certified by the Department;

(4) provide services under the supervision of a licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, or licensed master social worker-advanced clinical practitioner acting within their scope of practice who are employed as agency or contract staff, or developmental rehabilitation services by a:

(A) licensed therapist,

(B) licensed counselor,

(C) licensed social worker,

(D) registered nurse,

(E) Early Intervention Specialist (EIS) professional participating in or certified through the ECI Competency Demonstration System,

(F) certified teacher certified through the ECI Competency Demonstration System, or

(G) psychological associate;

(5) provide to the maximum extent appropriate to the needs of the child, early intervention services in natural environments, including home and community settings in which children without disabilities participate. Natural environments mean settings that are natural or normal for the child's age peers who have no disabilities; and

(6) deliver services in accordance with the scope and duration of the Individualized Family Service Plan (IFSP).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-9050



SUBCHAPTER F. SYSTEM OF FEES

40 TAC §108.601, §108.603

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of

the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.601. Purpose.

The purpose of this subchapter is to establish a system of payments for early intervention services, including a schedule of sliding fees, as authorized by the Individuals with Disabilities Education Act (IDEA, 20 U.S.C. §1400 et seq.) and its implementing regulations (34 C.F.R. Part 303), and to establish procedures to be used to determine a family's cost share for early intervention services based on their ability to pay.

§108.603. Administration of Family Cost Share System.

(a) Each ECI program must implement the family cost share system of sliding fees for all children enrolled in ECI comprehensive services in compliance with this subchapter, DARS policies concerning ECI and the contract.

(b) Prior to collection of income information or imposition of fees, parents must be fully informed of their right to receive certain ECI services at no cost, their right to refuse any services they do not wish to receive, their right to receive a review of their cost share or amounts due by an administrator of the program on request, and their right to information about any method the program may use to verify family income and allowable expenses.

(c) Programs must ensure that the inability of a family to pay for services will not result in the delay or denial of services to the child or the family.

(d) Determination of family income. The program will calculate the family's ability to pay based on the family's income in the following manner:

(1) During the intake process and at each six month and annual Individualized Family Service Plan (IFSP) review the program will collect information from the family regarding the family's gross income.

(2) The program may require verification of income from families based on written local policies or may rely on family self-report of income.

(A) Except as provided in subparagraph (B) of this paragraph, families with proof of enrollment in Medicaid, CHIP, food stamps, SSI or TANF cash benefits for all children enrolled in ECI are automatically assumed to have an inability to pay. Children in the conservatorship of the State including children in foster care are automatically determined to have an inability to pay.

(B) Families enrolled in Medicaid who have private insurance and consent to having their private insurance billed will be automatically assumed to have an inability to pay and need not provide further information for family cost share determination, even if their private insurance denies all claims for coverage.

(C) Enrollment of a child in a Medicaid waiver program is not deemed to be evidence of inability to pay if the family is not eligible for other Medicaid benefits.

(D) All children with auditory or visual disabilities who are eligible for a free and appropriate public education from birth under the Texas Education Code, §29.003(b)(1) are exempt from the cost share system. A note of the exemption shall be included on the Family Cost Share Agreement.

(3) Once the annual gross family income has been determined, the parents may request that their annual adjusted family in-

come be calculated by deducting allowable expenses from the gross income.

(A) Allowable expenses are those expenses expected to occur and/or be paid during the term of the IFSP and may include:

(i) Medical or dental expenses not reimbursed by insurance that the family incurred and which are expected to continue during the current IFSP period.

(ii) Payment toward outstanding medical or dental debt.

(iii) Medical and/or dental expenses and debt may include those accrued by all family members.

(iv) Childcare and respite expenses not reimbursed by other sources.

(v) Costs and fees associated with the adoption of a child.

(vi) Court-ordered child support payments for children who are not counted as family members or dependents in calculating the adjusted income and family cost share.

(B) The program may require verification of expenses from families based on written local policies or may rely on family self-report of expenses.

(4) Copies of income and/or expense documents need not be maintained by the program if an ECI employee reviews the documents and provides a written statement of verification, including a notation of the source of the documentation.

(5) A family who refuses to provide information for family cost share determination when requested by the program will be assessed as able to pay the highest cost share reflected on the sliding fee scale, until such time as they submit the required information. Services required to be provided at no cost will not be denied or delayed if the family fails to provide income information.

(6) If the program reviews the family's request for deductions to gross family income due to allowable expenses and finds that adjustments to the cost share are warranted, the cost share will take effect at the beginning of the next calendar month.

(7) Income is calculated based on income for all parents or guardians living in the same home with the child as a family. In situations where there is shared physical custody or shared legal or financial responsibility for a child, the adjusted income(s) of the parent(s) who financially supports the child will be considered unless conditions warrant otherwise.

(e) Determination of ability to pay and assignment of family cost share.

(1) Using the sliding scale developed by DARS, the program will determine the family's assigned monthly cost share. The sliding fee scale can be obtained from the Department.

(2) Families with a family income at or below 250 percent of the Federal Poverty Level will have a family cost share of \$0 and are determine to have an inability to pay.

(3) Families enrolled in Medicaid who have private insurance and refuse to allow ECI to bill their private insurance, thereby preventing submission of Medicaid claims, will be assigned a monthly cost share of \$10.

(f) IFSP services.

(1) Those services that must be provided at no cost to the family are:

(A) child find;

(B) evaluation and assessment;

(C) development of the Individualized Family Service Plan;

(D) all services to children with auditory or visual disabilities eligible for a free and appropriate public education from birth under the Texas Education Code, §29.003(b)(1);

(E) service coordination;

(F) translation and interpreter services; and

(G) administrative and coordination activities related to the implementation of procedural safeguards and other components of the statewide system of early intervention services.

(2) The monthly family cost share is the maximum amount a family can be charged for all other services provided by ECI as part of an IFSP.

(3) The state respite program funded with state discretionary funds is not subject to the cost share system.

(4) A family will be responsible for the assigned monthly cost share unless no services, other than those listed in paragraph (1) of this subsection, were delivered in the month.

(5) The maximum monthly cost share for which the family will be responsible will be indicated on a Family Cost Share Agreement form that the family must sign.

(6) For a family with an ability to pay, services included on the IFSP which are subject to cost share shall not be provided until the family signs the Family Cost Share Agreement.

(7) Services included on the IFSP which are not subject to cost share shall begin immediately after the IFSP is developed.

(g) Review of family cost share.

(1) The family's ability to pay and cost share amount will be reviewed at the six month review and annual IFSP meeting, or at any time the family requests a review, including immediately following initial assessment of ability to pay. Programs may provide for a streamline review without completing a new Family Cost Share Agreement when there has been no change in family income or size since the previous review.

(2) ECI programs must develop a local process for a family to request reconsideration or adjustment of their assigned family cost share and/or to request a waiver of their cost share obligation, amounts currently due or overdue based on extraordinary circumstances, including amounts due based on denial of claims by a third-party payor as per subsection (h)(1)(A) of this section. Adjustments for allowable expenses should be made prior to the consideration of extraordinary expenses. The program may initiate the review process when staff members become aware that the family is experiencing extraordinary circumstances that impact the family's ability to pay their cost share obligations.

(A) The review should be conducted by the program director or designated administrator.

(B) Examples of circumstances that could justify a reconsideration or change of a family's assigned cost share, or that could justify a temporary waiver from their monthly cost share obligation or amounts currently due or overdue, could include but are not limited to:

(i) increase or decrease in income, including loss of job or temporary unpaid leave from employment;

(ii) short-term medical expenses not deducted during determination of adjusted income;

(iii) extraordinary child care or respite expenses not deducted during the determination of adjusted income;

(iv) additional dependants or change in family size;

(v) catastrophic loss such as fire, flood or tornado;

(vi) short-term financial hardship such as major repair to the family home or car; or

(vii) other extenuating circumstances or financial obligations which the family feels are not adequately considered in the assessment of adjusted income, assigned monthly cost share, or their ability to meet their cost share in any particular month(s).

(C) Families may be asked to submit verification of such circumstances. Refusal to do so may result in denial of the cost share adjustment.

(3) If the program determines that adjustments to the cost share are warranted, the revised cost share will take effect at the beginning of the next month. The Family Cost Share Agreement must be amended for any revision of the family cost share, and family signature must be obtained for the revised Family Cost Share Agreement.

(4) Families must be informed of the program's process for reviewing their family cost share amount before they are asked to sign the Family Cost Share Agreement.

(5) The family's last signed IFSP and Family Cost Share Agreement will remain in effect during any review process. For families without a signed Cost Share Agreement, the services included on the IFSP which are not subject to cost share shall begin or continue during any period of review.

(h) Children with Insurance.

(1) Third-party payors.

(A) With parental consent, programs must bill Medicaid, CHIP, TriCare and private insurance or other third-party payors for covered services delivered according to the IFSP. To allow the local program to establish insurance billing, in the initial six months of service, family cost share shall be set at \$0 as long as the child maintains insurance coverage and the parent continues to provide the program with consent to bill the insurance for ECI services. After the initial six months, third-party reimbursement of any IFSP service(s) will satisfy the family's cost share obligation for the month the service(s) was delivered. If the third-party payor completely denies coverage for IFSP services subject to fees, the family will be responsible for the assigned cost share.

(B) Any applicable insurance co-payments for services may be paid with ECI federal funds.

(2) Billing families for services.

(A) Programs must bill the family for the assigned cost share.

(B) The assigned family cost share is the maximum amount to be billed to the family regardless of the number of children in the family receiving services from ECI.

(3) Payment and non-payment of fees.

(A) Families will have 30 days from the billing date to pay their family cost share. All unpaid balances due from the family

after 30 days will be considered delinquent unless the delay in payment is due to a delay in third-party reimbursement or notice of denial of a claim from a private or public third-party payor.

(B) Services subject to cost share will be suspended after 90 days for non-payment of family cost share. For families consenting to payment by third-party payors, the 90-day time period will begin when notice is first received that the third-party payor has denied all claims for reimbursement and all appeals are exhausted, if applicable. Partial reimbursement by a third-party payor will satisfy the family's cost share obligation for the month, as per paragraph (1)(A) of this subsection.

(C) Families must be notified that failure to maintain their cost share account in good standing will, after 90 days, result in the suspension of IFSP services that are subject to family cost share, and that if services are later reinstated, the program cannot guarantee that they will be reinstated on the same schedule or with the same individual service provider as prior to suspension.

(D) Service coordination and other services not subject to family cost share must be continued during any period of suspension, except that respite vouchers may be denied for payment during a period of suspension.

(E) A notation must be made on the Family Cost Share Agreement that services subject to family cost share have been suspended due to non-payment. If a family transfers between Texas ECI programs, the Family Cost Share Agreement will be transferred to the receiving ECI program along with the IFSP.

(F) Services that have been suspended will be reinstated when the family's account is paid in full or the family negotiates an acceptable payment plan with the local program. If more than six months have transpired since suspension, the IFSP team must reassess the appropriateness of the IFSP before reinstating services. The IFSP and the Family Cost Share Agreement should reflect the date of the reinstatement of services.

(G) Programs must have a written local policy for collecting delinquent family cost share. Documentation must be kept of reasonable attempts to collect on unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification and/or e-mail. The Program Director or Administrator may modify a family's payment plan or cost share if circumstances warrant.

(i) Program fiscal and record-keeping policies.

(1) Revenue received from the family cost share may only be used for early intervention services within the ECI program and may not supplant any other local fund sources. Fees collected must be reported to the ECI state office as program income.

(2) The Family Cost Share Agreement and any financial records related to income, expenses, and payment history shall be kept separate from the child's other educational records, and should not be forwarded to a school district or other non-ECI service provider(s) at any time unless requested by the family. All financial records must be maintained in a manner consistent with the Family Educational Rights and Privacy Act.

(3) The Family Cost Share Agreement and financial records must be transferred to another ECI program in the state if the child and family transfer to another ECI program.

(4) The Family Cost Share Agreement and financial records are subject to subpoena, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER G. CONTRACT REQUIREMENTS

40 TAC §§108.701, 108.703, 108.705, 108.707, 108.709, 108.711

The new rules are proposed pursuant to HHSC's statutory rule-making authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.701. Application and Program Requirements for Comprehensive Services.

(a) Funds for comprehensive services are available to public or private service organizations that may be current or potential providers of early intervention services for eligible children.

(b) A competitive procurement process may be used to ensure that the Department obtains the best value in purchasing services.

(c) The Department shall disseminate a funding application. Copies are available upon request from the Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention Services.

(d) The application shall consist of the forms and related material that the applicant shall complete to apply to receive funding for performing early intervention services. Applications must be submitted for a period specified in the funding application instructions.

(e) Applications must be submitted in accordance with DARS' instructions.

(f) Applications which are late or substantially incomplete will not be accepted and will be returned to the applicant with an explanation.

(g) Total program cost. Applications must include the total program cost projected for ECI program operations. The total program cost is defined as the sum of the total ECI share plus the total applicant share including program income.

(h) Program income. The contractor shall comply with the requirements of the contract, Uniform Grants Management Standards (UGMS) and any program-specific policies related to program income.

(i) Eligibility for continued funding shall be contingent upon the contractor's performance and progress toward meeting performance requirements, compliance with state standards, implementation

of program review findings, and availability of funds. The contractor shall submit an annual application for continuation funding.

§108.703. Contract Award.

(a) Following the review process, the Department will determine approval of funding recommendations. Each applicant will be notified in writing of the Department's decision. The reason for a denial will be communicated in writing to the applicant.

(b) Decisions for award of subsequent contracts will follow the procedures used for awarding initial contracts.

(c) Applicants will be notified of awards according to the means described in the solicitation package.

§108.705. Contract.

(a) An approved applicant will enter into a contract with the Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention Services, prior to being allocated funds. A contract is not fully executed until it has been signed by the Department and the applicant.

(1) The contract must be signed by an official authorized to enter into such agreements on behalf of the governing body.

(2) The contract cannot be altered without authorized officials of both the contractor and DARS providing written approval prior to the effective date of the change.

(3) No payment or advance of funds will be made until the contract is fully executed.

(4) By signing the contract the applicant agrees to all terms included therein and to adherence with all applicable statutes, rules, policies and procedures of the department, including subsequent amendments.

(b) The contract shall:

(1) contain provisions requiring the contractor to comply with the requirements in these sections, including statutes, rules, policies and procedures of the Department, including subsequent amendments, and the fiscal requirements on the administering, accounting, auditing, and recovering of funds as authorized by the Uniform Grant Management Standards (UGMS);

(2) state the contract number of children; this is the total number of eligible children that the provider has the capacity to serve at any one time;

(3) authorize the Department to adjust the contract amount as appropriate;

(4) authorize the Department to impose sanctions for non-compliance with contract terms and conditions, statutes, rules, and Department policies and procedures in accordance with the provisions of the Human Resources Code, §73.0051;

(5) incorporate all or part of the application as part of the contract; and

(6) include clearly defined goals, outputs, and measurable outcomes which directly relate to program objectives.

(c) Any modifications resulting from changes in state or federal laws and regulations or judicial interpretation of laws and regulations that occur during the contract period are automatically made part of the contract and go into effect on the effective date of the law, regulation, or court decision.

(d) The contract shall be concurrent with the current fiscal year, unless the Department approves partial year funding due to extenuating circumstances.

(e) The contract shall identify the county(ies) in which the contractor is authorized to perform early intervention services. Contractors that share counties must jointly develop a service area agreement to serve those counties. This service agreement must be approved by DARS ECI.

(1) A request to change the designated service area must be submitted to the ECI Assistant Commissioner.

(2) All requests for changes in service area assignments must be approved by the DARS ECI Assistant Commissioner before implementation.

(3) The Department will not incur additional expenses as a result of a request to change a service area when the provision of services will be at the same level for the same number of children.

§108.707. Remedial Contract Actions.

(a) The Department may impose remedial contract actions when the contractor fails to follow the terms of the contract or comply with program rules, policies, and procedures. In general, §105.1301 of this title (relating to Adverse Actions) applies.

(b) The remedial actions that the Department may impose on the contractor for noncompliance with the contract are:

(1) Adverse actions, which may be appealed; and

(2) Non-adverse actions, which may not be appealed.

§108.709. Financial Management and Recordkeeping Requirements.

(a) General. The contractor shall comply with the requirements of the contract, the provisions of §105.1013 of this title (relating to General Requirements for Contracting), §105.1101 of this title (relating to Record Requirements), and any program-specific policies related to financial management and recordkeeping requirements.

(b) Reimbursement for comprehensive service. All contractors will be required to establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources. Third parties include, but are not limited to, health maintenance organizations (HMOs), private insurance, Medicaid programs (Texas Health Steps and Targeted Case Management), Children's Health Insurance Program and the Children with Special Health Care Needs Program.

§108.711. Data Collection and Reporting.

(a) The contractor shall collect and report data as required by rules, the contract, and applicable instruction manuals. Data shall be submitted in the form, manner, and timeframe specified by the Department. Required data may include, but is not limited to: client data, including personally identifiable information regarding children served or referred; services received by individual eligible children; family information, including family size and income; service provider information, including information about individual employees or subcontracted employees of the contractor; agency and ECI program revenue and expenditure information; and any other information that might be necessary by the Department to perform their legally authorized functions, including the documentation of early intervention services planned and provided, billing and reimbursement functions, and other purposes.

(b) The Texas Kids Intervention Data System (TKIDS) and ECI data standards, established by the Department under Texas Human Resources Code, §73.0051(k), shall be used by contractors to submit client and services information to the Department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions. The amendment will add clarifications for terms defined.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terms used in the Occupational Therapy rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act (Act), Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by this amendment.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Certified Occupational Therapy Assistant (COTA)--
[An alternate term for a Licensed Occupational Therapy Assistant.]
An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR

or OT [OT]. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(6) - (28) (No change.)

(29) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR) [and a Licensed Occupational Therapist (OT)].

(30) Occupational Therapist, Registered (OTR)--[An alternate term for a Licensed Occupational Therapist.] An individual who uses this term must hold a regular or provisional license to practice or represent self as an Occupational Therapist [occupational therapist] in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(31) (No change.)

(32) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA) or an [a Licensed] Occupational Therapy Assistant (OTA [OT]).

(33) - (40) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200900959

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900



CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.4

The Texas Board of Occupational Therapy Examiners proposes an amendment to §364.4, concerning Licensure by Endorsement. The amendment will add a requirement for all Occupational Therapy licenses past and present to be verified to the board.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be verification that the applicant had no disciplinary actions against their license(s). There will be no effect on small businesses. There are anticipated economic

costs to persons who are required to comply with the rule as proposed in having to have all licenses verified.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act (Act), Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by this amendment.

§364.4. Licensure by Endorsement.

(a) The board may issue a license by endorsement to applicants currently licensed in another state, District of Columbia or territory of the United States which has licensing requirements substantially equivalent to this state. Previous Texas licensees are not eligible for License by Endorsement. An Applicant seeking endorsement must:

(1) - (2) (No change.)

(3) submit [Submit] verification of license(s) [license] in good standing from the state(s) in which the applicant is currently licensed, or previously held a license. This must be an original verification sent directly by the licensing board in that state, or,

(4) submit, if applying from a non-licensing state or US military and not holding a current state license, a Verification of Employment form substantiating occupational therapy employment for at least 2 years immediately preceding application for a Texas license.

(b) Provisional License:

(1) (No change.)

(2) The Board may grant a Provisional License to an applicant who has previously held a Texas license and does not meet the requirements for restoration of a license as outlined in Chapter 370 provided that such applicant has a current license in good standing in another state which has licensing requirements substantially equivalent to Texas. Upon receiving a passing score from NBCOT, a new regular license will be issued, as outlined in §364.2 of this title (relating to Initial License by Examination) [chapter]. A failing score will result in revocation of the Provisional License. The Provisional License will have a duration of 180 days. The applicant must:

(A) - (D) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900960

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900



CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.2

The Texas Board of Occupational Therapy Examiners proposes an amendment to §367.2, concerning Categories of Continuing Education. The amendment will add a new category for continuing education providing CE hours for student fieldwork supervision, which will recognize the mentoring and education of Fieldwork 1 and 2 students.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terms used in the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act (Act), Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by this amendment.

§367.2. Categories of Continuing Education.

(a) All continuing education must comply with Type 1 or Type 2 as outlined in §367.1 of this title (relating to Continuing Education). Continuing education undertaken by a licensee for renewal shall be acceptable if it falls in one or more of the following categories.

(1) - (5) (No change.)

(6) Fieldwork Supervision, 8 hours maximum, Type 2

(A) A licensee may earn 2 contact hours for each Level 1 student supervised. A licensee may earn 6 contact hours for each Level 2 student supervised. A licensee may earn a maximum of 8 contact hours for student supervision per renewal period.

(B) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators.

(C) Fieldwork education supervision must be completed before the licensee's renewal date.

(D) Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, school, and dates of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(7) ~~[(6)]~~ Any deviation from the above continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900966

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.2

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.2, concerning Late Renewal. The amendment will add the requirement that all state licenses, present and past are verified.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be verification that the applicant had no disciplinary actions against their license(s). There will be no effect on small businesses. There are anticipated economic costs to persons who are required to comply with the rule as proposed in having to have all licenses verified.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act (Act), Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by this amendment.

§370.2. Late Renewal.

(a) - (b) (No change.)

(c) Restoration: Persons holding a license in another state, previously licensed in Texas:

(1) The board may issue a license to a person who was licensed in Texas, moved to another state, is currently licensed in the other state, and has been engaged in the practice of occupational therapy in the other state for the two years preceding the application if the person meets the following requirements:

(A) (No change.)

(B) submits to the board verification of the current and expired license(s) [license] in good standing from the other state(s) since leaving Texas [state];

(C) - (E) (No change.)

(2) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900964

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.3, concerning Supervision of a Licensed Occupational Therapy Assistant. The amendment will add clarification to supervision requirements.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification in the supervision requirements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, (512) 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act (Act), Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Texas Occupations Code is affected by this amendment.

§373.3. Supervision of a Licensed Occupational Therapy Assistant.

(a) An occupational therapy assistant [A COTA/LOTA] shall provide occupational therapy services only under the supervision of [a licensed] occupational therapist(s) [therapist].

(b) Supervision of a full time employed occupational therapy assistant [COTA or LOTA] by the occupational therapist(s) [OTR or LOT] includes:

(1) A minimum of six hours a month of frequent communication between the supervising occupational therapist(s) [OTR(s) or LOT(s)] and the occupational therapy assistant [COTA or LOTA] by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus

(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the occupational therapist(s) [OTR(s) or LOT(s)] observing the occupational therapy assistant [COTA or LOTA] providing services with patients/clients.

(3) These hours shall be documented on a [COTA/LOTA] Supervision Log for each employer. The occupational therapist(s) [OTR/LOT] or employer may request a copy of the [COTA] Supervision Log. The [COTA] Supervision Log is kept by the occupational therapy assistant [COTA/LOTA] and signed by occupational therapist(s) [an OTR/LOT] when supervision is given.

(4) All the occupational therapist(s), whether working full time, PRN or part-time, who delegate to the occupational therapy assistant, must be participating in the supervision time, whether on a rotational or shared basis.

(c) Occupational therapy assistants [Licensees] working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the occupational therapist(s) [OTR(s) and LOT(s)] observing the occupational therapy assistant [COTA or LOTA] providing services with patients/clients.

(d) Those months where the occupational therapy assistant licensee does not work as a occupational therapy assistant [COTA/LOTA], he or she shall write N/A in the [COTA] Supervision Log for that month.

(e) {(d)} Occupational therapy assistants [COTAs or LOTAs] with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an occupational therapist(s) [OTR or LOT], as outlined for part-time employment in this section. Occupational therapy assistants who work for more than one employer must submit the name and license number of at least one OT at each employer, though any of the occupational therapist(s) at the employer may supervise.

(f) {(e)} The occupational therapy assistant [OTA] must include the name of the supervising OT in each patient's treatment note. This may not necessarily be the occupational therapist who wrote the Plan of Care, but an occupational therapist who is readily available to answer questions about the treatment or patient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2009.

TRD-200900965

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 19, 2009

For further information, please call: (512) 305-6900

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.10, 53.14 - 53.17

The Texas Parks and Wildlife Department withdraws the proposed amendments to §53.10 and §§53.14 - 53.17 which appeared in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1178).

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900945

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: March 5, 2009

For further information, please call: (512) 389-4775

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31 TAC §53.13

The Texas Parks and Wildlife Department withdraws the proposed amendment to §53.13 which appeared in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1181).

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900944

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: March 5, 2009

For further information, please call: (512) 389-4775

31 TAC §53.18

The Texas Parks and Wildlife Department withdraws the proposed repeal of §53.18 which appeared in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1181).

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900943

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: March 5, 2009

For further information, please call: (512) 389-4775

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DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The Texas Parks and Wildlife Department withdraws the proposed amendment to §53.30 which appeared in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1181).

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900942

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: March 5, 2009

For further information, please call: (512) 389-4775

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.7

The Texas Animal Health Commission (Commission) adopts a new Chapter 38, entitled "Trichomoniasis", §§38.1 - 38.7. Sections 38.1 - 38.4 and 38.6 - 38.7 are adopted with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9615). The text of the rules will be republished. Section 38.5 is adopted without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9615) and will not be republished.

Bovine Trichomoniasis (aka trichomoniasis or trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus* (*T. foetus*). The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

Certain herd management practices are risk factors for infection--commingled grazing or fence-line contact, where fences are not well maintained, with other herds is one documented risk factor, as is purchase of bulls of unknown disease status. Control of *T. foetus* in an infected herd includes testing bulls and culling those infected. Although use of younger bulls has been recommended as a control strategy because they have a lower prevalence of infection than older bulls, such use will not eliminate the possibility of infection. Artificial insemination is considered the classic method for controlling venereal diseases of cattle. However, this is often impractical in range cattle operations due to lack of facilities, expertise or management practices. Additionally, annual pregnancy testing and culling of non-pregnant cows can help control herd infection. Also, vaccination of females can decrease duration and severity of infection. If exposure to other risk factors cannot be avoided, vaccination is believed to help reduce economic loss.

The Commission convened a Trichomoniasis (Trich) Working Group (TWG) which met on September 26, 2008, in Austin, Texas. Eighteen members were present. Trich Working Group Chairman Coleman Locke, Beef Cattle Commissioner, led a

discussion of objectives. The goal of the group was to provide recommendations to the Texas Animal Health Commission on the components and implementation strategy for a Trichomoniasis Control Program for the State of Texas. The members were in agreement with the goal.

The first point of discussion was relative to the type of bulls to be tested. Should Texas accept "virgin" bulls without a negative test? After discussion, members agreed that we should accept bulls as virgin, with a breeder's certification of virginity, up to the loss of the first two incisor teeth. Bulls would be approximately 18 months of age at time of loss of first two incisors. Bulls with erupting incisors would have to be tested prior to entry into Texas or sale as breeding bulls in Texas. Also it was discussed whether the rules should be applied to cows and heifers as well as bulls. Some members expressed concerns over early bred cows and heifers and open cows and noted that these animals, if from an infected herd, could spread the disease into a buyer's herd. A number of states include cows and heifers in their regulations. After discussion, the TWG agreed that our program should only impact bulls, but that there should be an education component to educate producers about the dangers posed by purchased cows of unknown status.

The members expressed concerns about having another long, drawn out regulatory program such as the cattle brucellosis program. The TWG supported the inclusion in the rules of a requirement for a program review group that would meet annually to evaluate progress of the program and make recommendations relative to sunseting the program or for improvement to the program.

Group Recommendations for the Initial Rule Proposal

Approved Tests. Which Trichomoniasis tests should be approved to test bulls for importation or for sale in the state? Culture of Trich organisms is the gold standard test for the disease. The recommendation is to collect the test sample in an InPouch and incubate the sample in the same pouch. Microscopic evaluation and identification of the organism in the pouch denotes a positive test. The other test approved for use in most other states is the Real Time Polymerase Chain Reaction test (RT-PCR) which is performed on a sample collected and incubated in an InPouch. The TWG recommended that culture in an InPouch followed by microscopic identification of the cultured organism, and the RT-PCR test performed on InPouch samples be classified as official approved tests for the Texas Trichomoniasis Program. The estimated laboratory costs (does not include veterinary collection or sample shipping costs) for culture tests is \$5.00 per culture, and for RT-PCR tests is \$25.00 per sample.

The group also discussed how many tests are needed to determine the status of an animal. It was recommended that a single test of all non-virgin bulls in the herd, in which all of the bulls were

negative, would be sufficient for movement or sale for breeding of any tested bull in the bull herd. It was recommended that bulls of unknown status or non-virgin bulls from a herd that is Trich infected be tested negative on three culture tests performed not less than 7 days apart or be negative to at least two RT-PCR tests performed not less than 7 days apart.

Approved Labs. Currently many veterinary practitioners culture and examine Trich samples in their clinic laboratories. A number of states approve veterinary practitioner labs as official laboratories. However, neither TVMDL nor TAHC have the personnel or resources to conduct the training, check testing and certification necessary to establish practitioner labs as approved labs. The TWG recommended, at least as a place to start, that the TVMDL laboratories be classified as the official Trich laboratories for Texas. TVMDL has the staff and laboratory capacity to perform the tests for the program. Members agreed that if additional laboratories are needed, or logistic challenges (i.e. too far from an approved lab, inadequate mail service, etc.) TAHC labs and private practitioner labs could be considered at a later time.

Certification of veterinarians. Almost all states have some degree of required training or certification of veterinarians for collection of samples, handling and processing of samples for shipment to laboratories, reporting of results and handling of positive animals and herds. It was suggested and the TWG members agreed that TAHC would evaluate the certification programs of other states and identify the most appropriate components for inclusion in our program. The Commission will work with representatives from TVMA and from Texas AgriLife Extension Service to develop and deliver a veterinary Trichomoniasis certification program.

Identification of bulls. The TWG concurred that bulls tested for Trich would be identified by an official identification device or method at the time the initial test sample is collected. Official identification would include: Official Alpha-numerical USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands.

What happens when a bull is found to be infected? Many states have provisions for evaluation of culture positive bulls by means of a confirmatory RT-PCR test. The TWG recommended that a provision to petition for a confirmatory RT-PCR test be included in the Texas program. Bulls that have been determined to be infected by culture and/or confirmatory RT-PCR would be placed under hold order along with all other non-virgin bulls in the bull herd. Positive bulls could only be sold for slaughter. Movement to slaughter should occur within 30 days from disclosure of positive test results (or confirmatory test results). Positive bulls could be moved to markets for sale only directly to slaughter or from the ranch directly to slaughter. Infected bulls would be individually identified by official identification device on a VS 1-27 movement permit from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition. All bulls remaining in the herd from which an infected bull(s) has been identified would have to be tested two more times. Any bull positive on the second or third test would be classified as infected. All bulls negative to all three tests would be classified as negative and could be released for breeding.

Reporting of Trich test results. After discussion of the issue the TWG recommended that all Trich tests performed--both positive and negative--be reported to TAHC. Results should be reported

within 48 hours following completion of the test. At the present time the prevalence and distribution of Trich in Texas is not well identified. The reporting of all tests would enable development of prevalence and distribution data for the state and may help in the future to determine the most appropriate direction for the program.

Validity of test results. The group also discussed how long a negative test would be valid. The TWG agreed that imported breeding bulls have a negative test that was conducted within 30 days of importation into Texas. The TWG concurred that for sale of breeding bulls raised, tested and sold in Texas, that the negative test would in actuality be valid until the bull was exposed to a cow. From a practical and workable standpoint, members agreed that the negative status of tested bulls would be valid for 150 days from the test date so long as the bull had been maintained in isolation from any contact with female cattle from the time of Trich sample collection.

Chapter 38 contains the following sections:

Section 38.1 is entitled "Definitions" and provides definitions for terms utilized in this chapter.

Section 38.2 is entitled "General Requirements" and contains test and identification for bulls as well as contains the standards for a confirmatory test.

Section 38.3 is entitled "Infected Bulls and Herds" and describes how infected bulls and their associated herds are handled.

Section 38.4 is entitled "Certified Veterinary Practitioners" and provides that only veterinarians certified through the Commission shall collect samples for official tests for Trichomoniasis within the state of Texas.

Section 38.5 is entitled "Official Laboratories" and provides that the Texas Veterinary Medical Diagnostic Laboratory is the official laboratory to conduct testing for Trichomoniasis.

Section 38.6 is entitled "Official Trichomoniasis Tests" and recognizes which test are official test for Trichomoniasis.

Section 38.7 is entitled "Review of the Program" and establishes that the program will be reviewed in order to determine the effectiveness of this control program and make recommendations to the Commission whether the program should be continued or sunsetted.

Response to Comments and Changes to Proposal:

The rules were published for a sixty (60) day comment period.

The Commission received seventy-four (74) comments on the proposed disease control program for trichomoniasis. Those comments ran a broad spectrum from unequivocal support for a trichomoniasis control program to the other end of the spectrum with some feeling that the program is not needed or it will be costly and ineffective. A large number of the comments provided a variety of specific suggestions or recommendations for how the program should either be modified, strengthened, weakened or delayed. The Commission appreciates all the comments and through this document provides a response to all the comments with justification for changes made to the proposal in response to the comments.

The specific requirement that engendered the largest number of comments was regarding the age for certifying a breeding bull as having "virgin" status and therefore not have to be tested for Trichomoniasis prior to sale. Under the proposed rules, breeding bulls could be certified as virgin only up to approximately

18 months of age. The status, under the proposal, was for any "(s)exually intact male cattle which have not serviced a cow and which are young enough that neither of the first two incisor teeth have been lost" would be considered virgin. Obtaining that status would allow a breeding bull to be sold without test. The written comments that the Commission received covered the spectrum of recommendations. Several commenters requested that all breeding bulls be tested and remove the untested status for virgin bulls. A couple of other commenters felt like the "virgin" status should be offered or extended through thirty-six (36) months of age. Various other commenters have offered different age options ranging from less than eighteen (18) months to twenty-four (24) months, with twenty-four (24) months receiving the most comments. Also the Commission looked at the other states to see what age they established for virgin status and a majority of other states which have a Trich program allow classification of breeding bulls as virgin up to twenty-four (24) months of age.

The range of comments were varied for a variety of reasons. The most common reason was the fact that various breeds reach sexual maturity at different ages. While some breeds are sexually mature at eighteen (18) months, others may not reach sexual maturity until approximately thirty-six (36) months of age. There was also concern expressed through the comments that many producers did not have the facilities to maintain isolation of young bulls to ensure virgin status. Also some folks wanted a veterinarian to be able to certify the virgin status. Because a veterinarian provides services to a client on his cattle he could provide an additional level of certification. Since a veterinarian is licensed by the state and has a veterinary-client-patient relationship, with knowledge about the capability and management practices of the client to manage young bulls in isolation from female cattle, this is a viable suggestion as another level of certification of virgin status.

In response to the comments on virgin status the Commission is modifying the proposed rule to allow classification of bulls up to twenty-four (24) months of age as virgin, with the age being determined by the bull having the central permanent incisor teeth in wear or by a breeders registry certificate of age. Additionally, the rules will be modified to allow a breeder and his veterinarian to certify bulls as virgin up to thirty (30) months of age. The veterinarian's certification would verify that the facilities and management practices are sufficient to maintain the bulls in isolation from female cattle.

The second area where there were a large number of specific comments was regarding number and kinds of tests that are to be utilized in the program. The proposal provided for two tests to be recognized by the Commission. The first is the "Culture Test" which is designed to identify live trich organisms in a culture media and requires that a sample be received in the official laboratory, in good condition, within forty-eight (48) hours of collection. For the Culture test, ambient conditions in shipment are critical as the organisms should be protected from exposure to daylight and extremes of temperature.

This Culture test required three different tests which engendered a lot of concern about cost and efficiency. In trying to create an effective control program the Commission realizes that there is not a singularly 100% effective test that can be relied upon by all. The costs for multiple culture testing and veterinary visits were of concern throughout a number of the comments submitted. Because three culture tests conducted a week apart are necessary to provide a high degree of confidence that the bull being tested by the culture method is truly negative, there would be an in-

creased cost to the owner of the bull. A number of commenters suggested that the culture test not be approved for use in the program. There were several reasons for retaining the culture test as an official or approved test. The Culture test is considered the "Gold Standard" test for the disease. It is a valid test for Trich and is continually being utilized in many states to diagnose the disease. While not a part of the proposed rule, the test could be utilized as a tool for herd diagnostic testing.

The other recognized test for Trich is the Polymerase Chain Reaction (PCR) test. The PCR tests can identify either live or dead trich organisms in a test sample. Many states recognize the regular PCR test as official. Others require the Real-Time (RT) PCR test. The proposed rule recognizes the RT-PCR test as an official test on samples tested in Texas and would have required two RT-PCR tests to classify a bull as negative. The sample for RT-PCR testing is the identical to the sample that is needed for culture. It is collected in the same manner as the culture sample. However, the RT-PCR test is not so sensitive to environmental conditions as the culture test. It will give positive test results so long as there is trich DNA present in the sample. The sample would not have to arrive at the laboratory within 48 hours of collection to be a valid sample, as is required for culture.

Many commenters believed that multiple RT-PCR tests are not necessary to classify a bull as negative. They urged that the proposed rule be amended to allow sale of bulls based on one negative RT-PCR rather than two. After evaluating the comments, engaging in discussion with the trichomoniasis work group and in review of test protocols for other states, it was determined that one negative PCR test should suffice for bulls from herds not known to be infected. The proposed rule will be amended to require only one PCR test.

As part of these comments regarding the cost and efficiency of testing for trichomoniasis a couple of commenters requested that the agency should allow for a lay person, such as an employee or the cattle owner, working under the direction of their veterinarian, to collect the samples for trich testing. The Commission understands that such an option might incur some cost savings for a producer but ultimately the credibility of the program is dependent upon sampling and certification by qualified veterinarians.

As part of the comments and discussion on testing, several commenters also raised the issue of laboratory capacity and availability. Several veterinarians mentioned in their comments that restrictions on the lab availability and shipping requirements would prohibit them from collecting samples for culture tests on Friday and Saturday. The majority of these comments were made to the proposed rule requirements for a whole herd negative test on all breeding bulls as condition for sale of any breeding bulls from the herd. Based on comments received the commission is modifying the proposed rule to eliminate the requirement for a test of all non-virgin breeding bulls in the herd as a condition for sale of any breeding bull from the herd. Under the amended provisions any non-virgin breeding bull would be allowed to sell for breeding purposes if the bull was negative on three consecutive culture tests conducted not less than one week apart or negative on one PCR test. As result of these changes and after discussion with the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) the Commission believes that TVMDL has the capacity and can handle the test demands for the Texas trichomoniasis control program. Also it needs to be noted that we learned from TVMDL that the actual temperature range referenced in the rule under §38.6 for appropriate ambient

conditions was incorrect. We have corrected that range to reflect the appropriate temperature range under the test protocols.

Also in response to comments, discussion with laboratory personnel and discussion at the working group meeting regarding the timeframes for submission of samples and the impact of these timeframes on the days each week a veterinarian could collect trich samples, the Commission is amending the timeframes for submission of samples by the collecting veterinarian, handling of samples and receipt of samples by the laboratory. The requirement for receipt of samples for culture testing at the laboratory will remain as written in the proposed rule--the samples must be received in good condition by the laboratory within forty-eight (48) hours of collection. However, for samples being submitted for RT-PCR testing, the samples are to be submitted to arrive at the laboratory within forty-eight (48) hours of collection, or be incubated by the collecting veterinarian for forty-eight (48) hours following collection, then submitted to arrive at the laboratory within ninety-six (96) hours of collection. The Commission believes that these amendments to the proposed rule will effectively address the concerns about sample collection and laboratory issues.

Pooling samples was also a topic of a couple of comment letters. These commenters requested that pooling of samples be allowed on tests of bull herds. Pooling of samples is a sampling technique in which samples from several bulls are placed in the same culture media pouch. Pooling of samples has been utilized effectively by a number of veterinary practitioners to diagnose trich in infected cattle herds. If a pooled sample is positive, each individual bull included in the pooled sample would have to be retested to determine which individual animals were actually positive for the disease. Pooling could significantly reduce laboratory costs to the producer. Discussion at the working group meeting disclosed that test processes for pooled samples had not been validated. Additionally, there was a strong belief that bulls being tested for sale as breeding bulls should have individual tests. The working group urged that a test procedure for pooled samples be validated. Additionally, the working group noted that the proposed trich rules apply to bulls being sold for breeding purposes, they do not apply to bulls on farms and ranches that are not being offered for sale. Therefore, the rules do not prohibit a veterinarian from pooling samples taken as part of herd diagnostic tests. The Commission will not recognize pooling of samples as a procedure for testing of bulls for sale or importation.

The third area that received a number of comments were requests for the Commission to focus effort on education and information, with implementation of a control program held to a later date. Throughout a large number of comments submitted to the Commission the issue of awareness of the effects of Trich was widely varied. There were a number of comments that expressed or indicated a lack of first hand knowledge of the disease or how great an impact it might have on the cattle producers in this state. At the other end of the spectrum there were a number of comments that specifically represented first hand experience with the disease getting into their herd and the great cost and effort to test and eradicate the disease from their herd. There was also a number of commenters who wanted to know why the Commission would try and create a control program for a disease that did not have a human impact.

These issues were discussed at length by the working group. Ultimately a majority of the working group expressed the belief that Texas needs to move forward in development and implementa-

tion of a Trich program. They noted that the disease is having a very significant impact on cattle producers and breeders in the state and that it was the cattle and agriculture organizations and individual producers who requested development of the program. Both commenters and working group members stressed the necessity for an extensive information and educational effort by the industry organizations, extension, veterinary association, university and agency on the disease and its impacts on the cattle industry of the state. The Commission fully believes that education is an essential part of an effective disease control effort and has already developed and distributed some informational materials. The agency is also working with Agrilife Extension, Texas Veterinary Medical Association, TVMDL and the cattle industry organizations in the state to develop and deliver effective information and educational components of the trich program. While informational and educational efforts are critical to successful program, these efforts alone will not effectively address the disease situation. Based on a majority of comments received and a majority response from the working group, the Commission should proceed with implementation of the trich program as modified by comments received. However, in recognition of the need for an extensive information and education program and the time needed for certification of veterinarians, the working group recommended and the Commission supports delaying the implementation date for the provisions of Chapter 38 from September 1, 2009 until January 1, 2010 to provide time for information, education and certification efforts.

Another area of concern that a number of commenters raised is that the proposed trich control program does not address the disease in female cattle. The program as proposed is currently focused only on breeding bulls. The Commission recognizes that female cattle play a significant role in the disease process and that infected female cattle are the source of disease for breeding bulls. However, unlike bulls, female cattle have the ability to clear themselves from the disease. Almost all female cattle that are given 120 - 150 days of sexual rest will clear the organism from their reproductive systems. Additionally, most initial programs in other states did not include regulatory requirements for the cow herd. After discussion of this issue and the comments received relative to it at the working group meeting, the recommendation to the Commission is that the rules continue to be focused on the breeding bull and that the disease in the cow herd be addressed through information and education efforts.

Several commenters suggested that the agency conduct slaughter surveillance to determine the prevalence of Trich before implementing a trich program in the state. They note that without prevalence data, the Commission would have insufficient information on which to develop a program. The Commission appreciates this concern but must note that available data, while not sufficient to determine prevalence of the disease, does show that trich is widely distributed throughout the state. Additionally, the Commission lacks the resources to conduct a slaughter surveillance effort. It was noted at the working group meeting that a study could take considerable time during which the disease continues to spread. The majority of commenters urged that the Commission proceed with implementation of a trich program because of the disease impact on our cattle industry.

A couple commenters wanted to know what consisted of a bull herd. As a practical matter one bull used for breeding constitutes a herd. The definition used for herd is one used by the Commission for a variety of other disease control or eradication programs. It starts with one bull and can expand to any size for all cattle under common ownership or supervision or herds

which have cattle that have been interchanged or where there has been contact among the cattle on the different premises.

Some commenters wanted to know how a positive bull would be handled. Under the proposed rules a bull(s) that tests positive on any test is classified as a positive or infected bull. It is possible that a young bull can test positive on a culture test and not be infected with *Tritrichomonas foetus*. Such bulls are typically infected with *Trichomonas intestinalis* which does not cause infertility in cattle. For this reason the proposed rules include a provision whereby the owner of a bull which tested positive could be retested by RT-PCR test. The RT-PCR test can differentiate infection caused by *Tritrichomonas foetus* from *Trichomonas intestinalis*. Bulls positive on a PCR confirmatory test are classified as trich infected animals. A positive animal is required to go to slaughter and they would be moved to slaughter under a VS 1-27 permit, which provides for accountability and can be verified.

There were a couple of requests from producers that move cattle back and forth among neighboring states as part of their normal ranching operations. They requested that the current commuter herd program utilized for TB and Brucellosis be expanded to include Trich. A commuter herd program basically would allow a cattle herd owner to perform a test for Trichomoniasis on the bull herd and allow movement between the states without having to have a test prior to each movement. Commission staff will work with neighboring states to address this issue.

A number of commenters also question the appropriate timeframe that a test be valid after a bull is tested. The proposed regulations would allow tests to remain valid for 150 days on Texas bulls kept apart from females. However several commenters believe that this timeframe is too long and could allow for a greater risk that the animal had been exposed and become positive for Trich. This issue was discussed at the working group meeting. Members believe that the amendments incorporated into the proposed rule which provide that a bull could be classified as a virgin up to the age of 24 or 30 months and the amendments to allow individual bulls to sell on three negative culture tests or a single PCR test effectively eliminate the need for the test to be valid for an extended time. Therefore the recommendation is to reduce the test validity to 30 days following the test. This recommendation is incorporated into the adopted rule.

Some commenters asked what the impact of the proposed rule would be on exhibition or competition bulls. Unless these animals enter the state for the purpose of breeding or are sold, leased or exchanged for breeding purposes, these bulls would be allowed to enter without a test under the current provisions for exhibition cattle.

Some commenters noted that the proposed rule does not address the problem of a neighbor's animal getting into their pastures and commingling with their cattle herd, possibly spreading trich. Some working group members suggested that when animals get into neighboring herds that the animals be required to test for trich. The current proposed rules do not impact neighboring herds even though they may be exposed, and in some cases may have been the source of the disease. As proposed the rules only address bulls being sold for breeding purposes and bulls in herds found to be infected as result of testing for change of ownership or interstate movement. After discussion of this issue, the working group recommended that this issue be addressed through information and education efforts and not be included in the proposed rules.

Several commenters also raised concern about the Commission's enforcement of the program. The Commission realizes that the validity of the program depends on effective enforcement. The Commission takes enforcement as an important part of the agency mission. Under our statutory authority the Commission has an ability to issue administrative penalty for violations of agency regulations. The Commission will utilize all efforts to make sure compliance is effectively employed for this program.

There was a comment made regarding the use of the drug Dimetridazole as an effective treatment option. The commenter noted that at one time this was used for treatment of Trichomoniasis. The Commission appreciates the comment but would note that currently there are no effective treatment products that are labeled for treatment of trich and there are no effective treatment products that can be legally prescribed by a veterinarian for treatment of trich infected animals.

At the working group meeting, members discussed proposed implementation dates for the intrastate program. The proposed rule sets the implementation date as "not before September 1, 2009". After discussion, the working group recommended implementation for the intrastate program begin on January 1, 2010.

STATUTORY AUTHORITY

Chapter 38 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

§38.1. Definitions.

The following words and terms, when used in this chapter, shall have the defined meanings, unless the context clearly indicates otherwise:

(1) Accredited Veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Affected Herd--Any herd in which any cattle have been classified as *Trichostrongylus axei* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus *Bos*) and bison (genus *Bison*).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the Commission to collect Trichomoniasis samples for official Trichomoniasis testing and to perform any other official function under the Trichomoniasis program.

(5) Commission--The Texas Animal Health Commission.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered sterile for breeding.

(8) Exposed Cattle--Cattle that are part of an affected herd or cattle that have been in contact with Trichomoniasis infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd Test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected.

(14) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the Commission to restrict the movement of livestock or exotic livestock.

(15) Negative--Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis.

(16) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification included USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, official breed registry individual animal brands, and official Trich tags issued by the animal health official of the state of origin of imported bulls.

(17) Official Trichomoniasis test--A test for bovine trichomoniasis, approved by the Commission, applied and reported by TVMDL or any other laboratory classified as an official laboratory by the Commission.

(18) Positive--Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis.

(19) Permit--(VS 1-27)--A premovement authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

(20) Quarantine--A written Commission document or a verbal order followed by a written order restricting movement of animals because of the existence of or exposure to Trichomoniasis. The Commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of Trichomoniasis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(21) Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupted or erupted permanent incisor teeth (or older), which are being imported into the state of Texas or is being sold, leased, gifted or exchanged in the state of Texas for breeding purposes.

(22) Trichomoniasis--A venereal disease of cattle caused by the organism *Trichostrongylus axei*.

(23) TVMDL--The official laboratory for testing is the Texas Veterinary Medical Diagnostic Laboratory.

(24) Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are not more than 24 months of age as determined by the presence of the two permanent central incisors in wear or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle.

§38.2. General Requirements.

(a) Test Requirements: All Texas origin bulls sold, leased, gifted, exchanged or otherwise change possession for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status, or;

(2) If from a herd of unknown status (a herd that has not had a whole herd test), or a Trich infected herd, be tested negative on three consecutive culture tests conducted not less than seven days apart or one RT-PCR test conducted within 30 days of sale or movement, be held separate from all female cattle since the test, sample was collected, and be accompanied by a Trich test record showing the negative test results.

(b) Identification of bulls: All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numerical USDA metal ear tags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands. That identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test: The owner of any bull which tests positive for Trichomoniasis may request in writing, within five (5) days of the positive test, that the Commission allow a confirmatory test be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls: Bulls presented for sale without a breeder's certification of virgin status or a Trich test record showing negative test results may:

(1) Be sold for movement only directly to slaughter, or,

(2) Be sold and moved under a Hold Order to such place as specified by the Commission for testing to change status from a slaughter bull to a breeding bull. Such bulls shall be officially individually identified with a permanent form of identification prior to movement, move to the designated location on a VS1-27 permit, be held in isolation from female cattle at the designated location for not less than 21 days where the bull shall undergo three culture tests or for not less than 7 days where the bull shall undergo one RT-PCR test. If the results of any test are positive the bull shall be classified as infected and be permitted for movement only directly to slaughter or to a market for sale directly to slaughter.

§38.3. *Infected Bulls and Herds.*

(a) Bulls that have been determined to be infected by culture or by RT-PCR test and/or by confirmatory RT-PCR test shall be placed under hold order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a VS-1-27 movement permit from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results).

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional culture tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests). All bulls remaining in the herd from which an infected bull(s) has been identified

would have to be tested two more times by culture or one more time by RT-PCR test. Any bull positive on the second or third test would be classified as positive. All bulls negative to all three culture tests or both RT-PCR tests would be classified as negative and could be released for breeding.

§38.4. *Certified Veterinary Practitioners.*

(a) Only veterinarians certified through the Commission may perform Trichomoniasis program procedures, including but not limited to, collection of samples for official tests for Trichomoniasis within the state of Texas, submission of samples to official laboratories, identification of tested bulls and virgin bulls, management of Trichomoniasis infected bull herds, movement of infected bulls, and reporting of test results. In order to collect and submit Trichomoniasis samples a veterinary practitioner shall be certified to perform Trichomoniasis program procedures. In order to be certified, a veterinarian shall also be licensed to practice veterinary medicine in the state of Texas and be accredited through USDA.

(b) All veterinarians desiring to perform Trichomoniasis program functions shall participate in a certification program on Trichomoniasis program requirements and procedures before performing any Trichomoniasis program functions, including but not limited to review of the disease, proper sample collection techniques, sample preservation and laboratory submission, identification of animals, management of infected herds and shipment of infected or exposed animals to slaughter. The official certification program shall be conducted by or under the auspices of the Commission. Certified veterinarians shall be recertified every three years.

(c) Certified veterinarians shall utilize approved procedures for collection of samples, identification of animals and submission of samples to laboratories.

(d) Certified veterinarians shall only utilize the official laboratories for culture of Trichomoniasis samples.

(e) Certified veterinarians shall submit all Trichomoniasis samples including all official identification on official Trichomoniasis test and report forms to the TVMDL within the following time lines: Samples submitted for culture tests shall be submitted to arrive at the laboratory within forty-eight hours of collection of the samples. Samples submitted for RT-PCR tests shall be submitted to arrive at the laboratory within 48 hours of collection or be incubated by the collecting veterinarian for 48 hours, then be submitted to arrive at the laboratory within 96 hours of collection.

§38.6. *Official Trichomoniasis Tests.*

Approved Tests. Approved tests for trichomoniasis testing within the State of Texas shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected into an InPouch by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than forty-eight (48) hours will not be accepted for official culture testing. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 15 degrees Celsius (59 degrees Fahrenheit) and below 37 degrees Celsius (98.6 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the

Executive Director, and the sample is received in good condition by the laboratory within forty-eight (48) hours after collection, or is incubated by the collecting veterinarian for 48 hours after collection, then submitted to arrive at the laboratory within 96 hours of collection.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

§38.7. Review of the Program.

The Commission shall establish a Trichomoniasis Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary diagnostic laboratory, veterinary college, extension service and agency representatives which shall annually review the Trichomoniasis program and make recommendations to the Commission on amendments to program components or operation, or whether or not the program should be continued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 719-0714



CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

The Texas Animal Health Commission (TAHC) adopts amendments to Chapter 45, concerning Reportable Diseases, §45.2, concerning Duty to Report with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9619). The text of the rule will be republished.

Texas Agriculture Code Chapter 161, §161.101 requirements relate to the duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. The Commission has promulgated reporting requirements and specifies specific reportable diseases in Chapter 45 of the Commission rules.

Diseases are adopted for reporting in order to be protective of animal health in Texas. The Commission is proposing that Bovine trichomonosis (aka trichomoniasis or trich) be reportable because it does have a negative economic impact on the Texas cattle industry. The Commission is concurrently proposing a control program to prevent spread of the disease.

Bovine trichomoniasis is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are

typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

The proposed Trichomoniasis Control Program is for breeding bulls that are sold or transferred within this state or imported into this state. As part of the program all nonvirgin breeding bulls will need to be tested prior to sale. That program is being adopted as Chapter 38 of Title 4 of the Texas Administrative Code. As support for that program the Commission is listing Trichomoniasis as a reportable disease.

There were no comments received specific to this proposal however it has been determined that the word, "trichomoniasis" was misspelled. It was spelled as "trichomonosis" but should have been spelled as "trichomoniasis". As such the rule will be republished to properly indicate the correct spelling.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.101 provides that the Commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by subsection (a) or (b) if the Commission determines that action to be necessary for the protection of animal health in this state. The Commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the Commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

§45.2. Duty To Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties List A Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.
Figure: 4 TAC §45.2(a)

(b) In addition to reporting the existence of a disease under subsection (a) of this section, the veterinarian shall also report to the commission information relating to:

- (1) the species and number of animals involved;
- (2) any clinical diagnosis or postmortem findings;
- (3) any death losses;
- (4) location; and
- (5) owner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2009.

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 51, entitled "Entry Requirements", §51.8, concerning Cattle, with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9620). The text will be republished.

The purpose of the amendment to Chapter 51 is to provide trichomoniasis test requirements for breeding bulls entering the state.

The rule was published for a sixty (60) day comment period. There were seventy-four (74) comments received on the Trichomoniasis proposal for a new Chapter 38 and were published at the simultaneously with this proposal in the *Texas Register*. A number of those comments also voiced universal support for the entry requirements contained in this chapter. There were not any comments which were not supportive of this proposal or requested any change in this proposal. However in response to all the comments received regarding the Trichomoniasis proposal in Chapter 38 there are some changes being made to this rule to make it correspond to changes made on the intra-state program. The rule will be republished in order to indicate those changes which will be described below.

Bovine Trichomoniasis (aka trichomoniasis or trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

The Commission is currently adopting a Trichomoniasis Control Program which will include test requirements for all non-virgin breeding bulls sold in the state. As part of that program, the Commission is adopting test requirements for all non-virgin breeding bulls imported into this state. The adopted requirements located in §51.8(c) of this chapter will require that all imported breeding bulls be virgin bulls or have a negative trichomoniasis test conducted within 30 days of importation into Texas. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

The changes made to the entry requirement in §51.8(c) are as follows. Under the requirements for Chapter 38 the status of "virgin", for a breeding bull, is established at 24 months of age. This is in recognition that some cattle breeds take longer to mature thus making the age of twenty-four (24) months as being a more appropriate representation for a large number of various

breeding bulls. This age is identified by the presence of permanent central incisor teeth or through appropriate breed registry papers. The second area where the rule in being modified to correspond to changes in Chapter 38 are regarding the type of test and frequency. Under the test requirements all non-virgin bulls shall be tested three times under the official culture test or one time by the official Polymerase Chain Reaction (PCR) test. The change will allow entry on one PCR instead of the proposed two. This will mirror the test requirements for sales of non virgin breeding bulls in Texas.

The amendment is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. This authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. This authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. This authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement and Change of Ownership). Cattle, which are parturient, postparturient, or 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers, being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free

state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two (2) months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two (2) months of age must obtain a entry permit from the Commission, as provided in §51.2(a) of this title (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two (2) months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with a entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the TAHC or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clause (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold-Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(c) Trichomoniasis Requirements: All breeding bulls entering the state shall be virgin bulls not more than 24 months of age as determined by the presence of both permanent central incisor teeth in wear, or by breed registry papers; or be tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test within 30 days prior to entry into the state. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry. If the breeding bulls are virgin bulls they shall be individually identified by an official identification device and be accompanied with a breeders certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls. The official identification number shall be written on the breeders certificate. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Trichomo-

niasis tags. The identification shall be recorded on the test documents or the breeders certificate and the certificate of veterinary inspection prior to entry. Non-virgin bulls shall be tested three times not less than one week apart, for each test, by official culture test or one time by official PCR test prior to entry into Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900948

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: April 1, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 719-0714



CHAPTER 54. DOMESTIC AND EXOTIC FOWL REGISTRATION

4 TAC §54.1, §54.9

The Texas Animal Health Commission (Commission) adopts the amendments to Chapter 54, which is entitled "Domestic and Exotic Fowl Registration", §54.1, Definitions, and new §54.9, concerning Live Bird Marketing System, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9622) and will not be republished.

The Fowl Registration Program was created to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The primary purpose of the program is to ensure that the various type of fowl being sold or transported throughout this state do not pose a disease risk which could devastate the various Texas fowl industries. Texas has experienced problems with two devastating diseases in poultry--exotic newcastle disease (END) and avian influenza (AI). Both diseases are considered "foreign animal diseases," which means they are not native to the United States. END is a high-pathogenic disease, meaning it is more likely to spread, while AI has both low-pathogenic and high-pathogenic strains. When an outbreak of a high-pathogenic disease occurs, international trade agreements ban the affected areas from international trade until they get a clean bill of health. These diseases can be carried by the various types of fowl, some of which are not clinically affected by the disease.

The rules are being amended to put in place requirements focused on live bird markets and their production systems and distributors. A live bird market (LBM) is any facility that gathers live domestic fowl to be slaughtered and/or sold onsite. They receive a continual supply of domestic fowl which are slaughtered for food purposes for people who want to obtain their food in that manner. The state of Texas has a number of these type markets and they are generally located in proximity to large urban areas. However, these types of markets are a known disease risk for fowl related diseases with particular concern for avian influenza (AI). To address the persistence of low pathogenicity avian influenza (LPAI) associated with the live bird marketing system, the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) has instituted a cooperative program with States and industry to prevent and control

the disease not only in the markets themselves, but also among production premises and poultry distributors that supply those markets. Although birds affected with LPAI often show few or no clinical signs, the disease is highly contagious and its H5 and H7 subtypes have the potential to mutate into high pathogenicity avian influenza (HPAI). HPAI results in high mortality rates for poultry, may affect humans, and causes trading partners to implement immediate trade restrictions. In other countries, cases of human infection have been linked to HPAI. The program is focused on the live bird marketing system in order to control and prevent AI as well as improve biosecurity, sanitation, and disease control at participating operations. The states are responsible for enforcing LPAI program standards but should LPAI be detected, Federal indemnification can then be made available to participating facilities that follow all program directives.

This program will apply to all participants in the LBM system, including the suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets and will greatly assist the state to diagnose, control, and prevent High Path Avian Influenza and particularly H5 and H7 HPAI which is devastating to fowl and in other countries has infected people. Also, this program is intended to help participants to improve biosecurity, sanitation, and disease control in their operations as well as minimize the effects of LPAI on the U.S. commercial poultry industry.

In order for a State to join the LPAI program, all of its live bird markets, as well as producers and distributors that supply those markets, must be registered with the State and allow Federal and State inspectors access to their facilities, birds, and records. These facilities must also have written biosecurity protocols in place. These goals are achieved through regular monitoring and surveillance of all facilities in participating States. Training is a key component of the program and ensures that employees at all participating facilities understand what biosecurity protocols are and why they are important for preventing the spread of disease and for protecting animal health in this state.

Live Bird Market Requirements: This registration program contains the following elements: A live bird market will ensure that all birds are purchased from flocks that have been tested for LPAI at least quarterly; live bird market personnel will receive biosecurity training, and training records must be available to state and federal animal health official and be maintained in their personnel files; markets are responsible for verifying bird identification and obtaining documentation of negative AI test results for all birds at the time of their receipt and if records are not available, the birds cannot enter the market; and records for avian species, which include their date of entry and premise of origin identification number, must be retained for at least two years. Live bird markets that test positive for any fowl disease reportable to the Commission will undergo mandatory closure, be required to depopulate and undergo cleaning and disinfection of the facility. Before a live bird market can reopen for business, the facility must pass inspection by a State or Federal animal health official and be retested.

All birds provided to a distributor or directly to a live bird market from a production premise must originate from an AI-negative flock. Production facilities and equipment must be clean and sanitary at all times. Categories of production premises and the testing requirements for each category are as follows:

1. LPAI-monitored flocks: Flocks are tested monthly for the virus for at least 3 months before receiving status. Status may be continued so long as the flock is tested negative on a monthly basis.

2. Established flocks: Flocks that have been maintained together for at least 21 days prior to sample collection with no additions to the flock. To qualify for the first shipment or to requalify after any breaks in the monthly sample-testing regimen, 30 birds must be tested within 10 days prior to movement.

3. Commingled flocks: Groups of poultry from multiple sources that have been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock. This requires that the birds are tested not less than 21 days after commingling and not more than 10 days prior to movement.

4. Nonmonitored flocks: Those which have not been on a program of monthly testing for at least 3 months. To qualify for sale in the live bird market system, 30 birds in the flock must be tested within 10 days prior to movement.

Birds from production premises may not be sold directly to live bird markets unless the flock owner or manager is also registered as a distributor. In addition to testing regimens, production premises may be subjected to random inspections and testing by State and Federal animal health officials to ensure that their property, conveyances, and coops are clean and sanitary and that records are being kept in accord with program requirements. Flock test records, as well as records of bird transfers, must be maintained for not less than two years. Birds loaded for transportation to a distributor must be identified by premises of origin and must contain an appropriate date or lot number that will distinguish the shipment from others.

This adoption will enhance poultry disease prevention, control and response by requiring that the live bird market system, including transporters and distributors of fowl, register and participate in a disease surveillance program intended to minimize the impact of diseases.

Chapter 54 contains the following:

Section 54.1 is entitled "Definitions" and provides definitions for terms utilized in this chapter. This proposal adds definitions for "Live Bird Marketing Distributor", "Live Bird Market" (LBM), "Live Bird Production Unit" (LBPU), "Live Bird Marketing System" and a "Premises Identification Number" (PIN).

Section 54.9 is entitled "Live Bird Marketing System" and provides the mechanisms to obtain compliance for violations of this chapter. There is subsection (a) which contains registration requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (b) which contains record keeping requirements for: Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (c) which contains biosecurity requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (d) which contains inspection requirements. There is subsection (e) which contains Avian Influenza Test Requirements. There is subsection (f) which contains requirements for any LBMS where fowl are positive for a disease reportable to the Commission under Chapter 45 of this title.

No comments received regarding adoption of the rules.

Chapter 54 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. H.B. 2328 adds to Chapter 161, §161.0411 which authorizes the Commission to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The Commission is

vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. Furthermore the Commission may inspect the shipments of animals or animal products being transported in this state. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

Section 161.043, entitled "Regulation of Exhibitions", provides that the Commission may regulate the entry of livestock, domestic animals, and domestic fowl into exhibitions, shows, and fairs and may require treatment or certification of those animals as reasonably necessary to protect against communicable diseases. Section 161.049, entitled "Dealer Records", provides the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. Section 161.056, entitled "Identification of Exotic Animals", provides the commission may adopt rules to establish a standard method for identifying and tracking exotic livestock and exotic fowl. Section 161.081, entitled "Importation of Animals", provides the Commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country as well as the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The Commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits. Section 161.148, entitled "administrative penalty", provides that

the Commission may impose an administrative penalty against a person who violates a rule or order adopted under this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2009.

TRD-200900949

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: March 25, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 719-0714



TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.56

The Texas Board of Professional Land Surveying adopts an amendment to §661.56, concerning firm registration renewal and expiration. The amendment is adopted without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 26) and will not be republished.

The amendment will clarify the date when the firm registration will expire.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to Title 6, Subtitle C, Chapter 1071, §1071.151 of the Texas Occupations Code, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2009.

TRD-200900936

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: March 24, 2009

Proposal publication date: January 2, 2009

For further information, please call: (512) 239-5263



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board adopts the review of Chapter 391, concerning Polygraph Examiner Internship, §§391.1 - 391.10, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 447).

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 391, concerning Polygraph Examiner Internship.

TRD-200900992

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: March 9, 2009



The Polygraph Examiners Board adopts the review of Chapter 393, concerning General, §§393.1, 393.3 - 393.7, and 393.9 - 393.11, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 447).

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 393, concerning General.

TRD-200900993

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: March 9, 2009



The Polygraph Examiners Board adopts the review of Chapter 395, concerning Code of Operating Procedure of Polygraph Examiners, §§395.1 - 395.6, 395.8 - 395.11, 395.13 - 395.16, and 395.18 pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 447).

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 395, concerning Code of Operating Procedure of Polygraph Examiners.

TRD-200900994

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Filed: March 9, 2009



Texas Department of Public Safety

Title 37, Part 1

Pursuant to the notice of proposed rule review published in the December 5, 2008, issue of the *Texas Register* (33 TexReg 10069), the Texas Department of Public Safety has reviewed and considered for readoption, revision or repeal all sections as they existed on December 5, 2008, of the following chapters of Title 37, Part 1 of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039; Chapter 1 (Organization And Administration); Chapter 14 (School Bus Safety Standards); Chapter 17 (Administrative License Revocation); Chapter 18 (Driver Education); Chapter 23 (Vehicle Inspection); Chapter 27 (Crime Records); and Chapter 35 (Private Security).

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no comments regarding the review of its rules.

As a result of the rule review, the Department did identify and publish proposed amendments in other issues of the *Texas Register* in accordance with the Administrative Procedures Act.

This concludes the Department's review of 37 TAC Part 1, Chapters 1, 14, 17, 18, 23, 27, and 35.

TRD-200901042

Stanley E. Clark

Director

Texas Department of Public Safety

Filed: March 11, 2009



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax** - *Bacillus anthracis*

Aujeszky's disease - Pseudorabies virus, herpesvirus suis

Leishmaniasis** - *Leishmania infantum* and *L. donovani*

Foot and mouth disease - Aphthovirus, types A, O, C, SAT, Asia

Heartwater - *Cowdria ruminantium*

African Trypanosomiasis (Nagana) - *Trypanosoma brucei*, *T. vivax*, *T. brucei*

Rinderpest - Morbillivirus

Rift Valley fever - Bunya virus

Vesicular stomatitis - Rhabdovirus; 2 serotypes; New Jersey and Indiana

Screwworm - *Cochliomyia hominivorax*

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis*, *B. divergens*, *Babesia microti*

Bovine brucellosis - *Brucella abortus*

Bovine ephemeral fever - Rhabdovirus

Bovine trichomoniasis - trichomoniasis* ****

Bovine tuberculosis - *Mycobacterium bovis*

East coast fever (Theileriosis) - *Theileria parva*

Malignant catarrhal fever (wildebeest associated) - Alcelaphine herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - *Mycoplasma mycoides*

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy -

Scabies* - *Sarcoptes scabiei*, *Psoroptes bovis*, *Chorioptes bovis*

Cervidae

Brucellosis - *Brucella abortus*, *Brucella suis* (biotype 4)

Chronic Wasting Disease -

Tuberculosis - *Mycobacterium bovis*

Sheep and goat diseases

Caprine and ovine brucellosis (not *B. ovis* infection) - *Brucella melitensis*

Contagious caprine pleuropneumonia - *Mycoplasma capri* (biotype 78)

Louping ill - Flavivirus

Nairobi sheep disease - Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox - Capripoxvirus

Scrapie -

Scabies* - *Sarcoptes scabiei*

Equine diseases

African horse sickness - Orbivirus

Contagious equine metritis - *Tayorella equigenitalis*

Dourine - *Trypanosoma equiperdum*

Epizootic lymphangitis - *Histoplasma farciminosum*

Equine encephalomyelitis (Eastern and Western)** - Alphavirus

Equine infectious anemia - Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - *Babesia equi*, *B. caballi*

Glanders - *Pseudomonas mallei*

Japanese encephalitis - Flavivirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)* ***

Equine Herpes Virus-1 (EHV-1)*

Swine diseases

African swine fever - Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Swine vesicular disease - Picornavirus

Vesicular Exanthema - Calicivirus

Poultry diseases

Avian influenza - Orthomyxoviruse

Avian infectious laryngotracheitis - Orthomyxovirus, herpesvirus

Avian tuberculosis - Mycobacterium avium serovars 1,2

Duck virus hepatitis - Picornavirus

Duck virus enteritis - Herpesvirus

Fowl typhoid - Salmonella gallinarum

Highly pathogenic avian influenza (fowl plague) - Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - Chlamydia psittaci

Pullorum disease - Salmonella pullorum

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

* These diseases will only be reportable through the last day of the 81st Texas Legislative Session unless continued in effect by act of the legislature.

** These diseases are also reportable to the Department of State Health Services (DSHS).

*** This disease has reporting standards in Chapter 49, §49.4 of this title.

**** Results of tests for this disease shall be reported within 48 hours of completion of the tests.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

Invitation for Bids

The Capital Area Rural Transportation System (CARTS) is requesting bids for 22 and 25 foot cutaway buses on behalf of all Rural Transit Districts in Texas participating in this joint procurement.

It is anticipated that 120 - 150 buses will be purchased under this procurement. Texas state law requires that bus purchases be made through a certified Texas dealer.

Bid documents will be available on March 10, 2009. If you are a licensed Texas dealer for this type of bus, or a manufacturer of this type of bus, and you wish to receive an electronic copy of the bid document send a request to TexasBusBuy@RideCARTS.com. All correspondence and actions related to this bid will be done by electronic mail ONLY.

The schedule for the pre-bid conference and other events for this procurement will be provided with the bid documents. A public bid opening for this procurement is scheduled to be conducted at CARTS, 2010 E 6th Street, Austin, Texas 78702 at 2:00 p.m. CST on April 15, 2009.

TRD-200900953

Dave Marsh

General Manager

Capital Area Rural Transportation System

Filed: March 5, 2009



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 Texas Administrative Code (TAC) Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 27, 2009, through March 5, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on March 11, 2009. The public comment period for this project will close at 5:00 p.m. on April 10, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Save Cedar Bayou, Inc.; Location: The project is located at Cedar Bayou, Vinson Slough, and the Gulf of Mexico, near the Aransas County/Calhoun County line in Aransas County and Calhoun County, Texas. Directions: the project cannot be accessed by automo-

bile; directions are given from Goose Island State Park, approximately 10 miles northeast of Rockport, Texas. From Goose Island State Park, travel by boat southeast towards Spalding Cove. Past the Gulf Intra-coastal Waterway, turn northeast towards Carlos Bay, then east into Mesquite Bay. In Mesquite Bay, follow San Jose Island southeast to the entrance of Cedar Bayou. The project site begins approximately 1.5 miles southwest of this entrance. The project can be located on the U.S.G.S. quadrangle map entitled "Saint Charles Bay SE, Tex." Approximate UTM Coordinates in NAD 27 (meters): Zone 14; beginning at Mesquite Bay at approximately Easting 713200, Northing 3111800; ending in the Gulf of Mexico at approximately Easting 711000, Northing 3105625. Project Description: The applicant proposes to restore the historic hydraulic connection between Cedar Bayou and the Gulf of Mexico to create a fish pass as a route for migrating marine species and subsequently improve the fisheries of Mesquite Bay and the surrounding bay system. The applicant proposes to dredge the Cedar Bayou channel to the Gulf and dredge Vinson Slough to connect it to Cedar Bayou before it reaches the Gulf. The proposed dimensions for both the Cedar Bayou and Vinson Slough channels are 100 feet wide (bottom width) by 6 feet deep Mean Sea Level with 4Horizontal:1Vertical side slopes. The project is not intended as a navigation channel. CCC Project No.: 09-0104-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00813 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Bend Petroleum Corporation; Location: The project is located in wetlands within the Bessie Heights Wildlife Management Area adjacent to the Neches River, 3.6 miles northwest of Nederland, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Terry, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 408922; Northing: 3324024. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. The applicant proposes to fill 1.12 acres of wetlands/open water to construct a 175-by 280-foot wellpad and ring levee. Once the well is constructed and producing, the wellpad will be reduced to the minimum size necessary for production. Approximately 907 cubic yards of either shell or gravel will be used as fill material. The applicant proposes to mitigate by planting 5,228 feet of terrace levees (2.4 acres) in shallow, non-vegetated open waters, discharging 9,681 cubic yards of earthen material from borrow ditches adjacent to the proposed terrace levees. CCC Project No.: 09-0106-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00410 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Doug Norrell; Location: The project is located on the east side of Broadway just south of the Harbor Oaks Channel to Little Bay and will affect the land tract now occupied by Little Bay Marine, the adjacent shoreline, and the open water area of Little Bay, Rockport,

Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 693347; Northing: 3103816. Project Description: The applicant proposes to place fill material into 1,267 square feet of tidal wetlands and 7,483 square feet of unvegetated tidal waters along approximately 500 linear feet of the Little Bay shoreline for a residential development. The applicant also proposes to dredge a 40,340-square-foot area from the proposed shoreline and thence waterward 75 feet to a depth of minus 5.2 feet mean low water. No docks are proposed and boats will be moored alongside the proposed bulkhead. Excavation will occur either by barge mounted track-hoe or a track hoe working on mats. Dredged material will be temporarily placed in a contained barge, or double handled in the bay. CCC Project No.: 09-0107-F1. Type of Application: U.S.A.C.E. permit application #SWG-1997-02938 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200901004

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 10, 2009



Resolution of the Coastal Coordination Council Regarding Geotextile Tube Consistency Agreements with the City of Galveston and Galveston County

WHEREAS, the Coastal Coordination Council entered into agreements with Galveston County (the "County") on March 15, 2001 and the City of Galveston (the "City") on September 7, 2001 (collectively, the "Agreements"); and

WHEREAS, the Agreements authorized the City and the County to maintain certain previously constructed geo-textile shore protection projects (the "Geotubes") and provided for certain beach nourishment, access, monitoring, and reporting requirements in an effort to maximize the probability that the Geotubes would be maintained in a manner consistent with the Texas Coastal Management Program ("CMP"); and

WHEREAS, the Agreements noted that the Geotubes were installed as a temporary measure to slow the landward migration of the public beach and were not meant to be permanent fixtures; and

WHEREAS, the Agreements required the City and the County to remove their respective Geotubes if the monitoring demonstrated that the Geotubes were exacerbating erosion or otherwise negatively impacting the public beach or public use of the beach, or if the Coastal Coordination Council (the "Council") required removal as a result of improper nourishment or maintenance; and

WHEREAS, Hurricane Ike made landfall in the County on September 13, 2008, causing extensive damage to the City and the County, including all of the Geotubes; and

WHEREAS, due to the level of destruction to the Geotubes, the City and the County have removed them from the public beach in their entirety; and

WHEREAS, because the Geotubes no longer exist and the Council, the City, and the County have no further obligations or rights under the Agreements, the Agreements are now moot and no longer necessary.

NOW THEREFORE, BE IT RESOLVED BY THE COASTAL COORDINATION COUNCIL OF THE STATE OF TEXAS:

Section 1. Definitions. Capitalized terms used in this Resolution shall have the meaning ascribed to them in the recitals.

Section 2. Agreements. The Agreements are deemed moot and no longer necessary because the Council, the City, and the County have no further obligations or rights under the Agreements and the Geotubes have been fully removed from the public beach.

Section 3. Future Projects. Any new shore protection projects authorized or constructed by the City or County in critical dune areas or areas adjacent to or on Gulf Beaches, including the construction of new geo-textile tubes, must be in compliance with the CMP and the shoreline protection rules (31 Texas Administrative Code §501.26(b)).

Section 4. Notice. This Resolution or a memorandum of this Resolution shall be mailed to the City and the County by the Council Secretary and shall be published in the In Addition section of the *Texas Register*.

PASSED AND APPROVED by the Coastal Coordination Council of the State of Texas this 5th day of March, 2009.

TRD-200901003

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 10, 2009



Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2009

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Alamo Heights (Bexar Co)	2015021	.012500	.080000

An additional 1/8 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2009 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Malakoff (Henderson Co)	2107020	.016250	.082500
Leon Valley (Bexar Co)	2015058	.013750	.081250

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Olmos Park (Bexar Co)	2015067	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be **reduced** to 3/8 percent and the adoption of an additional 1/8 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2009 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Beeville (Bee Co)	2013014	.015000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** was **abolished**, effective March 31, 2009 and the **adoption** of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2009 in the city listed below. There will be no change in the local rate or total rate.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Pharr (Hidalgo Co)	2108127	.020000	.082500

An additional 3/4 percent city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/4 percent as permitted under Article 5190.6, Section **4A** plus an additional 1/2 percent as permitted under Article 5190.6, Section **4B** will become effective April 1, 2009 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Simonton (Fort Bend Co)	2079122	.020000	.082500

A 1/4 percent special purpose district sales and use tax will become effective April 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Duval Co Emergency Services District No. 1	5066519	.002500	SEE NOTE 1

A 3/8 percent special purpose district sales and use tax will become effective April 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Malakoff Crime Control District	5107501	.003750	SEE NOTE 2

A 1 percent special purpose district sales and use tax will become effective April 1, 2009 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Travis Co Emergency Services District No. 6	5227604	.010000	SEE NOTE 3

NOTE 1: The Duval County Emergency Services District No. 1 is located in the northwestern portion of Duval County. The Duval County Emergency Services District No. 1 has the same boundaries as the Freer Independent School District. The city of Freer is located entirely within the district. The unincorporated area of Duval County in ZIP Code 78357 is partially located within the Duval County Emergency Services District No. 1. Contact the district representative at (361)394-6553 for additional boundary information.

NOTE 2: The boundaries for the Malakoff Crime Control & Prevention District are the same as the boundaries for the city of Malakoff. The total rate in the city of Malakoff will be 8 1/4%.

NOTE 3: The Travis County Emergency Services District No. 6 is located in the southwestern portion of Travis County. The district's boundaries for the imposition of sales and use tax excludes any area in the cities of Austin, Bee Cave and Lakeway. The portion of the district east of Mansfield Dam is in the Austin MTA, which has a transit sales and use tax. The portion of the district west of Mansfield Dam is overlapped by the Lake Travis Community Library District, which has a special purpose district sales and use tax, except in an area surrounding the city of Bee Cave. The Village of the Hills, which does not impose a city sales and use tax, is located entirely within the district. The unincorporated areas of Travis County in ZIP Codes 78620, 78669, 78730, 78732, 78734 and 78738 are partially located within the Travis County Emergency Services District No. 6. Contact the district representative at (512) 266-2533 for additional boundary information.

[graphic]

TRD-200900970

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: March 9, 2009



Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Texas Finance Code §341.203.¹

The amounts of brackets in Texas Finance Code §342.201(a) are changed to \$1,800.00 and \$15,000.00, respectively.

The amounts of brackets in Texas Finance Code §342.201(e) are changed at \$3,000.00, \$6,300.00, and \$15,000.00, respectively.

The ceiling amount in Texas Finance Code §342.251 and §342.259 are changed to \$600.00 and \$1,200.00, respectively.

The amounts of the brackets in Texas Finance Code §345.055 are changed to \$3,000.00 and \$6,000.00, respectively.

The amounts of the bracket in Texas Finance Code §345.103 is changed to \$3,000.00.

The ceiling amount of Texas Finance Code §371.158 is changed to \$15,000.00.

The amounts of the brackets in Texas Finance Code §371.159 are changed to \$180.00, \$1,200.00, and \$1,800.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2009, and extending through June 30, 2010.

¹Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2007 Index = 610.075. The percentage of change is 600.47%. This equates to an increase of 600% after disregarding the percentage of change in excess of multiples of 10%.

TRD-200900997

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 9, 2009



Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/16/09 - 03/22/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/16/09 - 03/22/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200900998

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 9, 2009



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 20, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 20, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Al Leonard dba Al Leonard Ranch; DOCKET NUMBER: 2009-0020-PWS-E; IDENTIFIER: RN102671278; LOCATION: Brazos County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.46(t), by failing to post a legible sign at the facility that contains the name of the water supply and emergency telephone numbers; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence around all potable tanks and pressure maintenance facilities; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: \$291; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Bexar Metropolitan Water District Public Facility Corporation; DOCKET NUMBER: 2008-1849-PWS-E; IDENTIFIER: RN101236321; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide containment facilities for the liquid chemical storage tank; and 30 TAC §290.46(f)(3)(A)(i)(II), by failing to maintain records regarding the amount of sodium hypochlorite used each day; PENALTY: \$508; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Scott A. Bundy; DOCKET NUMBER: 2009-0243-WOC-E; IDENTIFIER: RN105467468; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: CMCR CORPORATION dba ASPS Beer & Wine; DOCKET NUMBER: 2008-1737-PST-E; IDENTIFIER: RN101569754; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.10(b), by failing to maintain the required underground storage tank (UST) records and make them immediately available for inspection; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure; PENALTY: \$6,596; ENFORCEMENT COORDINATOR: Steven Lopez, (512)

239-1896; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Crandall; DOCKET NUMBER: 2008-0589-MWD-E; IDENTIFIER: RN101917136; LOCATION: Crandall, Kaufman County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010834001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; 30 TAC §305.125(17) and TPDES Permit Number WQ0010834001, Sludge Provisions, by failing to submit the annual sludge reports; 30 TAC §305.125(5) and §317.4(d) and TPDES Permit Number WQ0010834001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1), TPDES Permit Number WQ0010834001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, Agreed Order Docket Number 2005-0837-MWD-E, Ordering Provision Number 3.b, and the Code, §26.121(a), by failing to comply with the permitted interim effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirement Number 7.c, by failing to submit noncompliance notification reports for effluent violations which deviate from the permitted effluent limitation by more than 40%; 30 TAC §305.125(1) and (11)(B) and §319.7(c) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirements Number 3.b, by failing to have all the required monitoring and reporting records available for review; 30 TAC §305.125(1), 319.1, and 319.7(a)(5) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirements Number 2, by failing to accurately complete monthly effluent reports; 30 TAC §305.125(17) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (4), TPDES Permit Number WQ0010834001, Effluent Limitations and Monitoring Requirements Number 4 and Permit Conditions Number 2.g, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater from the sanitary sewer collection system and floating solids; 30 TAC §305.125(9) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirements Number 7.a, by failing to notify the TCEQ of noncompliances which may endanger human health or safety, or the environment; and 30 TAC §§305.125(1), 319.1, and 319.7(d) and TPDES Permit Number WQ0010834001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent reports; PENALTY: \$63,616; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Juan G. Rodriguez dba El Ranchito Convenience Store; DOCKET NUMBER: 2008-0814-PST-E; IDENTIFIER: RN102347788; LOCATION: San Benito, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid current delivery certificate; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$6,548; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of Fort Worth; DOCKET NUMBER: 2008-1924-WQ-E; IDENTIFIER: RN101424687; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of municipal waste; PENALTY: \$3,750; Supplemental Environmental Project (SEP) offset amount of \$3,750 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Foster Consolidated Investments, L.L.C. dba Walburg Water System; DOCKET NUMBER: 2008-1688-PWS-E; IDENTIFIER: RN101453124; LOCATION: Williamson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; PENALTY: \$168; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(9) COMPANY: FRIENDSHIP ENTERPRISES, INC. dba In & Out Mini Mart; DOCKET NUMBER: 2008-1828-PST-E; IDENTIFIER: RN101743698; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,684; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Abdulbhai Momin dba Handi Plus 37; DOCKET NUMBER: 2008-1480-PST-E; IDENTIFIER: RN102838729; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; PENALTY: \$16,196; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2007-1279-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(3), 116.115(c), and 116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, New Source Review (NSR) Permit Number 2866C, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(1) - (3), 116.715(a), and 122.143(4), 40 CFR §60.18(c)(3)(ii) and §63.11(b)(6)(ii), Federal Operating Permit (FOP) Number O-02327, Special Terms and Conditions (STC) 1A and 19, Flexible Permit Number 95/PSD-TX-854, SC Number 11A, and THSC, §382.085(b), by failing to maintain a minimum header net heating value of 300 British thermal units per standard cubic

foot; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-02327, STC 19, Flexible Permit Number 95/PSD-TX-854, SC Number 13, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §117.310(c)(2) (formerly 30 TAC §117.206(e)(2)), and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §117.310(c)(1)(A) (formerly 30 TAC §117.206(e)(1)(A)), and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(2) and (3), 115.112(a)(1), 116.715(a), and 122.143(4), 40 CFR §63.119(b)(1), FOP Number O-02327, STC 1A, 4, and 19, Flexible Permit Number 95/PSD-TX-854, SC Number 5, and THSC, §382.085(b), by failing to prevent the landing of the internal floating tank roof; 30 TAC §115.112(a)(1) and §122.143(4), FOP Number O-02327, STC 1A and 4, and THSC, §382.085(b), by failing to prevent the landing of the internal floating tank roof; 30 TAC §117.8100(b)(1)(B)(2) (formerly 30 TAC §117.213(f)(3)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to prevent a greater than 5% down-time for the predictive emissions monitoring system (PEMS); 30 TAC §§101.20(3), 116.715(a), and 122.143(4), FOP Number O-02327, STC 19, Flexible Permit Number 95/PSD-TX-854, SC Number 1 and General Condition Number 8, and THSC, §382.085(b), by failing to maintain 12-month rolling average for nitrogen oxides emissions; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(3), 111.111(a)(1)(B), and 116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §§101.20(2) and (3), 115.352(4), 116.115(c), 116.715(a), and 122.143(4), 40 CFR §61.242-6(a) and §63.167(a)(1), FOP Number O-02327, STC 1A and 19, Flexible Permit Number 95/PSD-TX-854, SC Numbers 34E and 4, NSR Permit Number 2866C, SC Number 4E, NSR Permit Number 489, SC Number 5E, and THSC, §382.085(b), by failing to plug or cap open-ended lines; 30 TAC §117.310(f) (formerly 30 TAC §117.206(i)) and §122.143(4), FOP Number O-02327, STC 7A, and THSC, §382.085(b), by failing to prevent operation of a diesel engine; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02327, STC 19, NSR Permit Number 2798, SC Number 4B, and THSC, §382.085(b), by failing to prevent a boiler from exceeding the permitted firing rate; 30 TAC §116.115(c) and §122.143(4), FOP Number O-02327, STC 19, NSR Permit Number 9517, SC Number 1, and THSC, §382.085(b), by failing to prevent a boiler from exceeding the permitted firing rate; 30 TAC §117.345(b)(2) (formerly 30 TAC §117.219(b)(2)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to submit the Post-PEMS report within 15 days following the completion of the test; 30 TAC §122.222(k)(2) and THSC, §382.085(b), by failing to include emission points and their associated emissions in an FOP; 30 TAC §117.345(f)(10) (formerly 30 TAC §117.219(f)(10)) and §122.143(4), FOP Number O-02327, STC 1A and 7E, and THSC, §382.085(b), by failing to consistently record the start/stop or run times for diesel engines; 30 TAC §117.8130 (formerly 30 TAC §117.214(a)(1)) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to adequately monitor the ammonia slip of a boiler; 30 TAC §122.143(4), FOP Number O-02327, STC 18, and THSC, §382.085(b), by failing to document the parts washer monthly inspections; 30 TAC §115.782(c)(1)(B)(iii) and THSC, §382.085(b), by failing to perform extraordinary repair attempts to leaking valves;

and 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), FOP Number O-02327, STC 1A, and THSC, §382.085(b), by failing to make an entry on the flare visible emissions log; PENALTY: \$320,995; SEP offset amount of \$160,497 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: William K. Ingram; DOCKET NUMBER: 2009-0241-WOC-E; IDENTIFIER: RN103400933; LOCATION: Johnson County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: John Ho Im dba Johns Market; DOCKET NUMBER: 2008-1932-PST-E; IDENTIFIER: RN101879583; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: City of La Ward; DOCKET NUMBER: 2008-1848-PWS-E; IDENTIFIER: RN101388825; LOCATION: La Ward, Jackson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gallons per minute per connection; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank as well as an inspection of the interior of the pressure tank; and 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control measurements; PENALTY: \$1,664; ENFORCEMENT COORDINATOR: Andrea Linsion-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Deanna Lee; DOCKET NUMBER: 2009-0244-WOC-E; IDENTIFIER: RN105648638; LOCATION: Whitney, Hill County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Marlow Water Supply Corporation; DOCKET NUMBER: 2008-1784-PWS-E; IDENTIFIER: RN101198000; LOCATION: Cameron, Milam County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(4), by failing to provide a liquid level indicator; and 30 TAC §290.41(c)(3)(K), by failing to provide the well casing vent with a 16-mesh or finer corrosion-resistant screen; PENALTY: \$255; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Jimmie Wayne Massey; DOCKET NUMBER: 2008-1683-MWD-E; IDENTIFIER: RN102178092; LOCATION: Matagorda County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011768001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted limits for total suspended solids and oil and grease; PENALTY:

\$3,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: MERCANTILE ENTERPRISES, INC. dba In & Out Mini Mart #2; DOCKET NUMBER: 2008-1931-PST-E; IDENTIFIER: RN101892800; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,309; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: David Nelson; DOCKET NUMBER: 2009-0246-WOC-E; IDENTIFIER: RN105646186; LOCATION: Whitney, Hill County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Hector Guzman dba Shiloh Oak Mobile Home Park; DOCKET NUMBER: 2008-1800-PWS-E; IDENTIFIER: RN101217222; LOCATION: Liberty County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and THSC, §341.033(d), by failing to collect routine distribution coliform samples; and 30 TAC §290.122(c)(2)(A), by failing to provide public notice of the failure to collect coliform samples; PENALTY: \$8,272; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: TC AND E REALTY, INC. dba Fasttime Convenience; DOCKET NUMBER: 2008-1933-PST-E; IDENTIFIER: RN103732269; LOCATION: Killeen, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §334.45(c)(3)(A), by failing to ensure that the emergency shutoff valves were securely anchored at the base of the dispensers; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$9,200; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2008-1859-AIR-E; IDENTIFIER: RN102608932; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 9582, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$5,150; SEP offset amount of \$2,060 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Bryan El-

liott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: United Fuel & Energy Corporation; DOCKET NUMBER: 2009-0242-PST-E; IDENTIFIER: RN102247038; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: petroleum bulk stations and terminals; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; and 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(24) COMPANY: City of Waco; DOCKET NUMBER: 2009-0240-WQ-E; IDENTIFIER: RN105207575; LOCATION: McLennan County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Sid Wright; DOCKET NUMBER: 2009-0245-WOC-E; IDENTIFIER: RN105648646; LOCATION: Whitney, Hill County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200901005

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 10, 2009



Enforcement Orders

A default order was entered regarding Bountheung Noymany dba Boat Club Grocery, Docket No. 2006-0490-PST-E on March 3, 2009 assessing \$21,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buddy Ford, Docket No. 2006-0504-PST-E on February 27, 2009 assessing \$5,704 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fairmont Cleaners, Inc. dba Fairmont Cleaners, Docket No. 2006-1316-DCL-E on March 3, 2009 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Prince Texas Group, Inc., Docket No. 2007-0084-PST-E on March 3, 2009 assessing \$11,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jake Davis, Docket No. 2007-0606-PST-E on March 3, 2009 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding FKD Enterprises Inc. dba Lucky Seven Food Mart, Docket No. 2007-0728-PST-E on March 3, 2009 assessing \$14,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Port Arthur, Docket No. 2007-0787-MWD-E on March 3, 2009 assessing \$13,860 in administrative penalties with \$2,772 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rodolfo Ruiz, Docket No. 2007-0866-MSW-E on March 3, 2009 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jason S. Goff, Docket No. 2007-0875-LII-E on March 3, 2009 assessing \$262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Corinne Maib dba Coletto Water, Docket No. 2007-0935-PWS-E on March 3, 2009 assessing \$2,365 in administrative penalties with \$473 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ICI Construction, Inc., Docket No. 2007-1146-WQ-E on March 3, 2009 assessing \$17,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding T S Ranch & Retreat, Inc., Docket No. 2007-1360-PWS-E on March 3, 2009 assessing \$3,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2007-1508-AIR-E on March 3, 2009 assessing \$5,642 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2007-1531-AIR-E on March 3, 2009 assessing \$28,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Stoneridge Custom Homes, Inc., Docket No. 2007-1682-WQ-E on March 3, 2009 assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hank Cantu dba Hills of Texas Bulk Water, Docket No. 2007-1826-PWS-E on March 3, 2009 assessing \$3,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carotex, Inc., Docket No. 2007-2019-IWD-E on March 3, 2009 assessing \$9,800 in administrative penalties with \$1,960 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A. K. Interests-Hunterwood, L.P., Docket No. 2008-0562-MWD-E on March 3, 2009 assessing \$2,834 in administrative penalties with \$566 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Four States Recycling, Inc., Docket No. 2008-0596-MLM-E on March 3, 2009 assessing \$6,115 in administrative penalties with \$1,223 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Estate of Patetreen Petty dba Big Wood Springs Water System, Docket No. 2008-0608-MLM-E on February 26, 2009 assessing \$8,672 in administrative penalties with \$7,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2008-0687-AIR-E on March 3, 2009 assessing \$40,000 in administrative penalties with \$8,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lucite International, Inc., Docket No. 2008-0822-AIR-E on March 3, 2009 assessing \$31,600 in administrative penalties with \$6,320 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2008-0921-AIR-E on March 3, 2009 assessing \$15,850 in administrative penalties with \$3,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Imaging Bureau, Inc., Docket No. 2008-1024-AIR-E on March 3, 2009 assessing \$6,290 in administrative penalties with \$1,258 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Gates Water Supply Corporation, Docket No. 2008-1037-PWS-E on March 3, 2009 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silo Road Partners, Ltd., Docket No. 2008-1105-WQ-E on March 3, 2009 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AUSTWELL AQUA FARM, INC., Docket No. 2008-1113-IWD-E on March 3, 2009 assessing \$1,270 in administrative penalties with \$254 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Overwraps Packaging, L.P., Docket No. 2008-1116-AIR-E on March 3, 2009 assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2008-1120-AIR-E on March 3, 2009 assessing \$39,290 in administrative penalties with \$7,858 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC dba INEOS Polyethylene North America, Docket No. 2008-1121-AIR-E on March 3, 2009 assessing \$4,450 in administrative penalties with \$890 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Klass Talsma dba Talsma Dairy, Docket No. 2008-1146-AGR-E on March 3, 2009 assessing \$10,815 in administrative penalties with \$2,163 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerene Ferguson, Docket No. 2008-1159-PST-E on March 3, 2009 assessing \$5,748 in administrative penalties with \$1,149 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PD Glycol LP, Docket No. 2008-1180-AIR-E on March 3, 2009 assessing \$5,875 in administrative penalties with \$1,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rogelio Ramon, Docket No. 2008-1197-MLM-E on March 3, 2009 assessing \$3,740 in administrative penalties with \$748 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Deer Park, Inc., Docket No. 2008-1205-AIR-E on March 3, 2009 assessing \$11,200 in administrative penalties with \$2,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-1230-AIR-E on March 3, 2009 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2008-1231-AIR-E on March 3, 2009 assessing \$8,100 in administrative penalties with \$1,620 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Julie Ann Thames dba Primrose Mobile Home Park, Docket No. 2008-1238-PWS-E on March 3, 2009 assessing \$588 in administrative penalties with \$117 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Riesel, Docket No. 2008-1243-MWD-E on March 3, 2009 assessing \$1,950 in administrative penalties with \$390 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ofelia Bosquez dba Wenchos Gas & Food Mart, Docket No. 2008-1251-AIR-E on March 3, 2009 assessing \$1,420 in administrative penalties with \$284 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2008-1269-AIR-E on March 3, 2009 assessing \$7,025 in administrative penalties with \$1,405 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hood Flexible Packaging Corporation, Docket No. 2008-1273-AIR-E on March 3, 2009 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Honeywell International Inc., Docket No. 2008-1283-AIR-E on March 3, 2009 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Grove Water Supply Corporation, Docket No. 2008-1297-PWS-E on March 3, 2009 assessing \$2,265 in administrative penalties with \$453 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2008-1298-AIR-E on March 3, 2009 assessing \$6,656 in administrative penalties with \$1,331 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Favelle Favco Cranes USA, Inc., Docket No. 2008-1300-MLM-E on March 3, 2009 assessing \$4,128 in administrative penalties with \$825 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3, Docket No. 2008-1344-PST-E on March 3, 2009 assessing \$4,700 in administrative penalties with \$940 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Pipe Line Company, Docket No. 2008-1349-AIR-E on March 3, 2009 assessing \$3,325 in administrative penalties with \$665 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON U.S.A. INC., Docket No. 2008-1358-PST-E on March 3, 2009 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Disposal Company, Inc., Docket No. 2008-1372-MSW-E on March 3, 2009 assessing \$3,888 in administrative penalties with \$777 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clarkson Energy Homes, Inc. dba Sun Valley Mobile Home Park, Docket No. 2008-1376-PWS-E on March 3, 2009 assessing \$5,146 in administrative penalties with \$1,029 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ata Ur Rahman Khawaja dba M & R Food Market, Docket No. 2008-1387-PST-E on March 3, 2009 assessing \$3,097 in administrative penalties with \$619 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greif Packaging LLC, Docket No. 2008-1416-AIR-E on March 3, 2009 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeske Construction Co., Docket No. 2008-1419-WQ-E on March 3, 2009 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hallsville, Docket No. 2008-1420-MWD-E on March 3, 2009 assessing \$4,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEPTUNE INTERNATIONAL INC. and PARKVIEW PROPERTIES, INC. dba Sugar Land Food Mart, Docket No. 2008-1438-PST-E on March 3, 2009 assessing \$13,846 in administrative penalties with \$2,769 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lufkin Industries, Inc., Docket No. 2008-1439-AIR-E on March 3, 2009 assessing \$3,366 in administrative penalties with \$673 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Altivia Corporation, Docket No. 2008-1442-IWD-E on March 3, 2009 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Toll Bros., Inc., Docket No. 2008-1452-WQ-E on March 3, 2009 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Merisol USA LLC, Docket No. 2008-1458-AIR-E on March 3, 2009 assessing \$3,425 in administrative penalties with \$685 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mitsubishi Caterpillar Forklift America Inc., Docket No. 2008-1469-AIR-E on March 3, 2009 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AAEMS LLC dba Kwik Mart 2, Docket No. 2008-1487-PST-E on March 3, 2009 assessing \$9,521 in administrative penalties with \$1,904 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnson Plate and Tower Fabrication, Inc., Docket No. 2008-1519-AIR-E on March 3, 2009 assessing \$12,250 in administrative penalties with \$2,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Whirlwind Steel Buildings, Inc., Docket No. 2008-1528-AIR-E on March 3, 2009 assessing \$10,700 in administrative penalties with \$2,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2008-1561-AIR-E on March 3, 2009 assessing \$9,250 in administrative penalties with \$1,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frontera Generation Limited Partnership, Docket No. 2008-1625-AIR-E on March 3, 2009 assessing \$5,450 in administrative penalties with \$1,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hale Center, Docket No. 2008-1644-PWS-E on March 3, 2009 assessing \$336 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HCN MANAGEMENT, LLC, Docket No. 2008-1666-WQ-E on March 3, 2009 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Permian Enterprises, Ltd., Docket No. 2008-1701-AIR-E on March 3, 2009 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding HNQ, Inc. dba Kool Corner, Docket No. 2008-1500-PST-E on March 3, 2009 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Larry Oates Construction Company, Docket No. 2008-1507-WQ-E on March 3, 2009 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding 50's Classic Car Wash of Lubbock, Inc., Docket No. 2008-1573-PST-E on March 3, 2009 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Clear Lake City Water Authority dba Robert T. Savely Water Reclamation Facility, Docket No. 2005-2018-MWD-E on February 27, 2009 assessing \$3,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200901052

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 11, 2009



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an op-

portunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 20, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 20, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: AP Livingston Limited Partnership dba Texaco Food Mart; DOCKET NUMBER: 2006-1894-PST-E; TCEQ ID NUMBER: RN101784478; LOCATION: 688 Highway 190 West, Onalaska, Polk County; TYPE OF FACILITY: owned real estate that had three out of service underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: \$3,675; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Evans Weaver; DOCKET NUMBER: 2007-0393-LII-E; TCEQ ID NUMBER: RN104787213; LOCATION: 10324 Farm-to Market Road (FM) 2244, Austin, Travis County; TYPE OF FACILITY: landscape business; RULES VIOLATED: 30 TAC §30.5 and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, including the connection of such system to any water supply; PENALTY: \$625; STAFF ATTORNEY: Rebecca Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Hien Huynh dba Quick Food Store 9; DOCKET NUMBER: 2007-1793-PST-E; TCEQ ID NUMBER: RN101791770; LOCATION: 204 East Little York Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.242(1)(C) and §115.242(3) and (A), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems and by failing to maintain the

Stage II vapor recovery system in proper operation condition, as specified by the manufacturer and/or any applicable California Air Resource Board Executive Order, and free of defects that would impair the effectiveness of the system; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modifications, whichever occurs first; PENALTY: \$4,500; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Keeper Management, L.L.C.; DOCKET NUMBER: 2008-0256-MWD-E; TCEQ ID NUMBER: RN101523264; LOCATION: 6421 Hermann Road, Houston, Harris County; TYPE OF FACILITY: domestic wastewater treatment system; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$2,160; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Maverick County; DOCKET NUMBER: 2008-0637-MSW-E; TCEQ ID NUMBER: RN102459690; LOCATION: behind the Loma Bonita Subdivision between Bianca Street and Christian Street, Eagle Pass, Maverick County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ Docket Number 2006-1812-MSW-E, Ordering Provisions IV.2.b., by failing to dispose of municipal solid waste at an authorized facility and by failing to comply with ordering provisions for Docket Number 2006-1812-MSW-E; and 30 TAC §312.9 and TWC, §5.702, by failing to pay late Sludge Haulers fees for TCEQ Financial Administration Account Number 0803551H; PENALTY: \$3,810; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: Phil Skloss; DOCKET NUMBER: 2008-0899-PST-E; TCEQ ID NUMBER: RN104259221; LOCATION: 7803 FM 1346, San Antonio, Bexar County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §334.7(a)(1), by failing to register all USTs in existence on or after September 1, 1987, with the agency on authorized agency forms; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$3,675; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Teofilo R. Gonzalez dba Mini Super Las Palmas; DOCKET NUMBER: 2004-0342-PST-E; TCEQ ID NUMBER: RN101681252; LOCATION: 1/4 mile west of the intersection of FM 2221 and Minnesota Road, Mission, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control at a retail fuel dispensing facility; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from any part of the UST; 30 TAC §334.49(c)(4) and (2)(C), and TWC, §26.3475(d), by failing to have the cathodic protection system tested by a corrosion specialist or corrosion technician once every three years, and by failing to inspect the impressed current cathodic protection system at least every 60 days to ensure that the rectified and other system components are operating properly; 30 TAC §334.7(d)(3), by failing

to file with the agency within 30 days from the date of the occurrence of the change or addition, an amended registration form; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with an identification number listed on the UST Registration and Self-certification form; 30 TAC §334.8(c)(5)(B)(ii), by failing to ensure that a delivery certificate is renewed by timely and proper submission of a new UST Registration and Self-Certification form to the commission; 30 TAC §334.8(c)(5)(A)(i) and TWC §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into an UST; 30 TAC §334.10(b), by failing to maintain records pertaining to the UST system at the facility and to provide those records to commission personnel upon request; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Financial Administration Account Number 0057001U; PENALTY: \$46,725; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200901000

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 10, 2009



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 20, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 20, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers;

however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Arnold J. Garcia; DOCKET NUMBER: 2008-0716-PST-E; TCEQ ID NUMBER: RN101836021; LOCATION: intersection of Highway 81 and Ranch Road 117, Dilley, Frio County; TYPE OF FACILITY: former retail gasoline station; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) within 30 days of the occurrence of the change or addition; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$12,600; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ASAP Enterprises, Inc. dba VIP Cleaners 5 and dba IP Cleaners; DOCKET NUMBER: 2006-1285-DCL-E; TCEQ ID NUMBER: RN104098116 and RN100705763; LOCATION: 12379 Kingsride Lane, Houston, Harris County (VIP Cleaners 5 Facility) and 2368 South Dairy Ashford, Houston, Harris County (IP Cleaners Facility); TYPE OF FACILITY: dry cleaning drop stations; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$2,370; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Carmen Martinez; DOCKET NUMBER: 2008-0914-PST-E; TCEQ ID NUMBER: RN101683373; LOCATION: 305 South Seventh Street, Raymondville, Willacy County; TYPE OF FACILITY: former retail gasoline service station; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into compliance with the upgrade requirements and by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$22,050; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Curtis Cashion; DOCKET NUMBER: 2008-0176-PST-E; TCEQ ID NUMBER: RN104999008; LOCATION: 407 North Avenue C, Olney, Young County; TYPE OF FACILITY: former retail gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service no later than 60 days after the prescribed update one UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$7,875; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL

OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Fikremariam Deresse and Gizaw Getachew dba John's Corner Store; DOCKET NUMBER: 2007-1786-PST-E; TCEQ ID NUMBER: RN101539716; LOCATION: 4925 South Second Avenue, Dallas, Dallas County; TYPE OF FACILITY: inactive UST; RULES VIOLATED: 30 TAC §334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system had not been brought into timely compliance with the upgrade requirements; and 30 TAC §334.22 and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ financial account number 0031759U for Fiscal Years 1997 - 2007; PENALTY: \$7,875; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: James F. Lunsford dba Fairview Joint Venture; DOCKET NUMBER: 2008-1086-MWD-E; TCEQ ID NUMBER: RN101516672; LOCATION: east of United States (US) Route 75, one mile south of the intersection of State Route 121 and US 75, Collin County; TYPE OF FACILITY: operates the Fairview Mobile Home Park Wastewater Treatment Facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013806001, Permit Condition 2.d., by failing to operate and maintain the facility to prevent the discharge and accumulation of sludge in the receiving stream; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ0013806001, Monitoring and Reporting Requirement Number 7c, by failing to submit non-compliance notifications as required; 30 TAC §319.7(a), §305.125(1) and (11)(B), and TPDES Permit Number WQ0013806001, Monitoring and Reporting Requirement Number 3.b., by failing to retain facility records; 30 TAC §217.281(a)(1) and §305.125(1) and (11), and TPDES Permit Number WQ0013806001, Effluent Limitations and Monitoring Requirements Number 2, by failing to maintain the 20 minute detention time in the chlorine contact basin; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit Number WQ0013806001, Effluent Limitations and Monitoring Requirements Number 6, by failing to comply with permitted effluent limits; 30 TAC §317.4(a)(5) (currently §217.37(a), 217.128, and 217.161(d)), and TPDES Permit Number WQ0013806001, Operational Requirements Number 4, by failing to provide a form of auxiliary power at the facility; 30 TAC §305.125(17) and TPDES Permit Number WQ0013806001, Sludge Provisions, by failing to submit the annual sludge report by September 1st of each year as required by permit; 30 TAC §317.4(a)(8) and §317.7(i) (currently §217.330(a) and (b)), by failing to properly install the reduced-pressure backflow assembly (RPBA) at the plant's main potable water service line and to test the RPBA annually; 30 TAC §305.125(5) and §317.4(b)(4) (currently §217.123(b)), and TPDES Permit Number WQ0013806001, Operational Requirements Number 1, by failing to properly dispose of screenings; 30 TAC §305.125(5) and TPDES Permit Number WQ0013806001, Operational Requirements Number 1, by failing to properly operate and maintain the treatment system; 30 TAC §319.11(d) and TPDES Permit Number WQ0013806001, Monitoring and Reporting Number 2, by failing to accurately calculate instantaneous flow measurements; and 30 TAC §305.125(1) and TPDES Permit Number WQ0013806001, Other Requirements Number 8, by failing to submit a report that addresses the feasibility of connecting the system served by the permitted facility within six months of issuance of the permit; PENALTY: \$38,850; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512)

239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Jarrod L. Meyer dba Jarrod's Lawn and Landscaping; DOCKET NUMBER: 2008-1155-LII-E; TCEQ ID NUMBER: RN104846183; LOCATION: 5902 Stoneleigh Drive, Tyler, Smith County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and §344.4(a), by failing to prevent the advertisement or representation of oneself to the public as a holder of a license or registration without possession of a current license or registration; PENALTY: \$300; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Javier B. Armendariz; DOCKET NUMBER: 2008-1668-PST-E; TCEQ ID NUMBER: RN101835726; LOCATION: 1112 South Dixie Boulevard, Odessa, Ector County; TYPE OF FACILITY: abandoned mechanic shop/car wash facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), TWC §26.3475(c)(1), and TCEQ Agreed Order, Docket Number 2006-1902-PST-E, Ordering Provisions Number 2.a.i., by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.49(a), TWC §26.3475(d), and TCEQ Agreed Order, Docket Number 2006-1902-PST-E, Ordering Provisions Number 2.a.ii., by failing to provide proper corrosion protection for the UST system; and TCEQ Agreed Order, Docket Number 2006-1902-PST-E, Ordering Provision Number 1, by failing to timely and satisfactorily comply with the administrative penalty payment requirements and late fees associated with the penalty; PENALTY: \$31,250; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(9) COMPANY: Jimmy Miller, Executor of the Latham Miller Estate; DOCKET NUMBER: 2008-0666-PST-E; TCEQ ID NUMBER: RN102249836; LOCATION: Highway 71 between East Willis Street and West Willis Street, Pontotoc, Mason County; TYPE OF FACILITY: former gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into compliance with the upgrade requirement; and 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding USTs within 30 days of the date on which the owner or operator first became aware of the change or addition; PENALTY: \$11,550; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(10) COMPANY: John M. Harris; DOCKET NUMBER: 2007-1980-WOC-E; TCEQ ID NUMBER: RN103714820; LOCATION: northeast of the junction of State Highway 114 and US Highway 377, Town of Marshall Creek, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a), TWC §37.003, and THSC §341.034(b), by failing to renew a public water system operator license prior to performing duties in production, treatment, and distribution of public drinking water; PENALTY: \$250; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Kazi Begum dba Quick Stop; DOCKET NUMBER: 2008-1256-PST-E; TCEQ ID NUMBER: RN102457785; LOCATION: 12111 Farm-to-Market Road 3083, Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales

of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC §26.3475(c)(1), by failing to provide release detection by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §115.246(4) and (6) and THSC §382.085(b), by failing to maintain Stage II records at the Station and make them available upon request by agency personnel; and 30 TAC §115.242(1)(C) and (3)(A) and THSC §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems and failing to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$6,390; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(12) COMPANY: Leonard Garcia; DOCKET NUMBER: 2008-1211-PST-E; TCEQ ID NUMBER: RN102130598; LOCATION: 1220 North Garfield Street, San Angelo, Tom Green County; TYPE OF FACILITY: three inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the UST system is not brought into timely compliance with the upgrade requirements and by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.22(a) and TWC §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0042001U for Fiscal Years 1995 - 2006; PENALTY: \$16,800; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(13) COMPANY: Samuel Fachorn; DOCKET NUMBER: 2008-0578-MLM-E; TCEQ ID NUMBER: RN105370001; LOCATION: 2877 County Road 216, Burleson County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §111.201 and THSC §382.085(b), by failing to comply with the general prohibition of outdoor burning within the State of Texas; and 30 TAC §330.15(c), by failing to comply with the general prohibition of dumping or disposal of municipal solid waste within the State of Texas; PENALTY: \$3,142; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Walker Wood Preserving, Inc.; DOCKET NUMBER: 2005-0349-MLM-E; TCEQ ID NUMBER: RN102523461; LOCATION: 3947 State Highway 146 South, Livingston, Polk County; TYPE OF FACILITY: wood preserving facility; RULES VIOLATED: 30 TAC §§305.62, 305.69, 305.125(8), 335.2, and 335.69, Industrial Hazardous Waste (IHW) Permit Number 50308, Provision II.A.1., and 40 Code of Federal Regulations (CFR) §262.34(a), by failing to amend or modify the facility's permit; 30 TAC §305.125(1) and IHW Permit Number 50308, Provision II.A.2., by failing to comply with the provisions of IHW Permit Number 50308; 30 TAC §111.201 and THSC §382.085(b), by causing, suffering, or allowing outdoor burning in the State of Texas without the authorization from the commission; 30 TAC §335.62 and §335.431(c) and 40 CFR §262.11 and §268.7(a)(1), by failing to conduct hazardous waste determinations for

two hazardous waste streams (United States Environmental Protection Agency Hazardous Waste Codes K001, D004, D007, and F035) and determine if its waste streams were restricted from land disposal prior to shipping off-site; 30 TAC §335.6, by failing to notify the commission of the existence of hazardous waste streams and hazardous waste management units; 30 TAC §335.13(i), IHW Permit Number 50308, Provision I.I.C.1.h., and 40 CFR §262.40(a), by failing to retain hazardous waste manifests for hazardous waste for a minimum of three years from the date of shipment; 30 TAC §335.9(a)(1) and IHW Permit Number 50308, Provision I.I.C.1.h., by failing to keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of; 30 TAC §335.4 and TWC, §26.121(a)(1), by failing to prevent unauthorized discharges of hazardous and industrial waste; and 30 TAC §§205.6, 335.324, and 335.331, TWC, §5.702, and THSC, §361.135(c), by failing to pay Storm Water General Permit and Hazardous Waste Facility fees for Fiscal Year 2005; PENALTY: \$101,000; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200901001

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 10, 2009



Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 20, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 20, 2009**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Adnan Najm dba Sunmart 352; DOCKET NUMBER: 2008-0752-PST-E; TCEQ ID NUMBER: RN101943140; LOCATION: 3300 Yellowstone Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), and (7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system; 30 TAC §115.242(1)(C) and (3)(K) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; 30 TAC §334.50(b)(1)(A), (2), (A)(i)(III), (d)(1)(B)(ii), (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; PENALTY: \$22,708; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Je Jalaram, Inc. dba JC's Food Mart; DOCKET NUMBER: 2007-1939-PST-E; TCEQ ID NUMBER: RN102485737; LOCATION: 5801 John Stockbauer Drive, Victoria, Victoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50 and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and make them available for inspection upon request by agency personnel; 30 TAC §334.7(d)(3), §334.8(c)(4)(A)(vii), (B), and (5)(B)(ii), by failing to notify the agency of any change of any additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier, a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; PENALTY: \$16,320; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Mike Lucio dba Mike Lucio's Auto Service; DOCKET NUMBER: 2007-1243-PST-E; TCEQ ID NUMBER: RN101687572; LOCATION: 106 South Commerce Street, Harlingen, Cameron County; TYPE OF FACILITY: operates an automotive servicing facility; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide a corrosion protection system for the UST at the facility; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding an UST within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Financial Account Number 0032789U for Fiscal Years 2006 - 2007; PENALTY: \$17,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200900999

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 10, 2009



Notice of Water Quality Applications

The following notices were issued during the period of March 3, 2009 through March 6, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a con-

tested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BRAZOS ELECTRIC POWER COOPERATIVE INC which operates a steam electric generating facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001904000, which authorizes the discharge of once-through cooling water (from unit 1, 2, and 3) at a daily average flow not to exceed 85,000,000 gallons per day via Outfall 001; and low volume wastewater, previously monitored effluents (water treatment waste and metal cleaning waste from internal Outfall 102), and storm water runoff on an intermittent and flow variable basis via Outfall 002. The draft permit authorizes the discharge of once-through cooling water (from unit 1, 2, and 3) and deminimus auxiliary cooling water at a daily average flow not to exceed 85,000,000 gallons per day via Outfall 001; and low volume wastewater, previously monitored effluents (water treatment waste and metal cleaning waste from internal Outfall 102), and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 602 West Lake Drive on the southwest shore of Lake Weatherford, approximately four miles northeast of the City of Weatherford, Parker County, Texas.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TPDES permit WQ0012090001 issued to U.S. Army Corps of Engineers to include the monitoring frequency of once per month and sample type of instantaneous for flow. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 95 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located near the Granger Lake Project Office adjacent to Farm-to-Market Road 971 at the north end of Granger Dam at a point approximately 8 miles east of the intersection of State Highway 95 and Farm-to-Market Road 971 in Williamson County, Texas.

ABITIBI CONSOLIDATED CORP which operates the Lufkin Mill, an integrated pulp and paper mill, has applied for a renewal of TPDES Permit No. WQ0000368000, which authorizes the discharge of process wastewater, utility wastewater, washdown water, domestic wastewater, landfill leachate, and storm water at a daily average dry weather flow not to exceed 17,400,000 gallons per day via Outfall 001; storm water and water from the water storage tanks on an intermittent and flow variable basis via Outfall 002; storm water, boiler blowdown, discharges from the fire system (i.e., fire system test water), and cooling water on an intermittent and flow variable basis via Outfall 004; and storm water on an intermittent and flow variable basis via Outfall 005. The facility is located at 3201 Atkinson Drive, on the north side of State Highway 103, approximately 0.25 of a mile east of the intersection of State Highway 103 and Farm-to-Market Road 842 on the northeast of the City of Lufkin, Angelina County, Texas.

OAK GROVE MINING COMPANY LLC which operates the Oak Grove Lignite Mining Area, a lignite surface mining facility, has applied for a major amendment to TPDES Permit No. WQ0002699000 to add Outfall 004 for the discharge of wastewater from the new active Kosse Expansion Mining Area, and Outfall 104 for the discharge of wastewater from the new post Kosse Expansion Mining Area, to the permit. The current permit authorizes the discharge from retention ponds in the "active mining areas" on an intermittent and flow variable basis via Outfalls 001 (Kosse Mining Area), 002 (Bremond Mining Area), and 003 (Thornton Mining Area); the discharge of treated wastewater from retention ponds in the "post-mining area" on an intermittent

and flow variable basis via Outfalls 101 (Post Kosse Mining Area), 102 (Post Bremond Mining Area), and 103 (Post Thornton Mining Area); and the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via Outfall 201. The facility is located along Farm-to-Market Road 2293, approximately 6 miles southeast of the City of Bremond, Limestone and Robertson Counties, Texas.

SYNAGRO OF TEXAS CDR INC has applied for a renewal of Permit No. WQ0004591000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 202.7 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 1 3/4 miles southeast of Rock Island, Texas, and approximately 2.5 miles south of the intersection of Alternate Highway 90 West and County Road 118 in Colorado County, Texas.

THE CITY OF GORMAN has applied for a renewal of Permit No. WQ0010091001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located southwest of the City of Gorman, west of Farm-to-Market Road 79 (Crescent Street) in Eastland County, Texas.

CITY OF HARKER HEIGHTS has applied for a renewal of TPDES Permit No. WQ0010155001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located approximately 3,000 feet northwest of the intersection of U.S. Business 190 and Farm-to-Market Road 3219, approximately 1/4 mile north of U.S. Business 190 on the south bank of Nolan Creek in Bell County, Texas.

THE CITY OF GONZALES has applied for a major amendment to TPDES Permit No. WQ0010488001 to move the point of discharge, revise the discharge route and remove effluent limits and monitoring requirements for Total Dissolved Solids and Chlorides. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located at the confluence of the Guadalupe River and Tinsley Creek, approximately 4,000 feet east of U.S. Highway 183, and approximately 5,000 feet south of U.S. Highway 90-A in Gonzales County, Texas.

MATAGORDA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 6 has applied for a renewal of TPDES Permit No. WQ0010663001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 193,000 gallons per day. The facility is located approximately 3,000 feet east of the intersection of State Highway 35 and Farm-to-Market Road 2540 in Matagorda County, Texas.

TARRANT BAPTIST ASSOCIATION INC has applied to TCEQ for a renewal of TPDES Permit No. WQ0010895001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. TCEQ received this application on November 14, 2008. The facility is located approximately 1,000 feet due west of the Brazos River and approximately four miles due east of the intersection of Farm-to-Market Road 56 and Farm-to-Market Road 144 in Somervell County, Texas.

BRAZOS RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011318001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located approximately 3,000 feet south of Farm-to-Market Road 93 and approximately 1.5 miles east of the intersection of Farm-to-Market Road 93 and Interstate Highway 35 in Bell County, Texas.

EAST CEDAR CREEK FRESH WATER SUPPLY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0011858001 to authorize installation of a tertiary clarifier and upgrades in the chemical feed and sludge handling system. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located on the northeast side of Cedar Creek Reservoir within the City of Gun Barrel City, approximately 1,500 feet northwest of the intersection of Hammer Street and Welch Lane, and approximately 1.2 miles southwest of the intersection of State Highway 334 and State Highway 198 in Henderson County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to TCEQ for a renewal of TPDES Permit No. WQ0012234002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located approximately three miles east of Farm-to-Market Road 762 and 1.3 miles north of Farm-to-Market Road 1462 and approximately 2,700 feet south of the Park Interpretive Building in Brazos Bend State Park in Fort Bend County, Texas.

CAMP FOR ALL FOUNDATION has applied for a renewal of TPDES Permit No. WQ0013838001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 270 feet south of the intersection of Rehburg Road and Oliver Earl Lane north of the Town of Burton in the northwest portion of Washington County, Texas.

HORSESHOE VILLAGE MHC LLC has applied for a renewal of Permit No. WQ0013880001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,460 gallons per day via subsurface drip irrigation of 4.7 acres of non-public access agricultural land and requested for deletion of the 29,260 gallons per day final phase. The wastewater treatment facility and disposal site are located approximately 0.25 mile north of the intersection of U.S. Highway 183 and State Highway 29 in Williamson County, Texas.

SOUTHWEST MILAM WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014110001, which authorizes the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 31,000 gallons per day. The facility is located on the south side of Farm-to-Market Road 908 approximately 1,500 feet east of the intersection of Farm-to-Market Road 908 and Milam County Road 316 in Milam County, Texas.

SUNFIELD MUNICIPAL UTILITY DISTRICT NO 4 and Guadalupe-Blanco River Authority has applied for a renewal of TPDES Permit No. WQ0014377001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility will be located at 1431 Satterwhite Road, approximately 2,000 feet east of the intersection of Farm-to-Market Road 2001 and Satterwhite Road in Hays County, Texas.

LOWER COLORADO RIVER AUTHORITY AND BRAZOS RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014477001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located approximately 9,150 feet southeast of the intersection of U.S. Highway 183 and State Highway 29, and approximately 4,000 feet north of the South Fork San Gabriel River in Williamson County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 8-Day Pre-election Report due October 27, 2008

June Perdue Jenkins, Texas Democratic Women of Collin County, 5421 Palace Dr., Richardson, Texas 75082

Richard D. Ramsey, P.O. Box 971, Newton, Texas 75966

Deadline: Monthly Report due January 5, 2009

James D. Marston, Texas League of Conservation Voters Political Committee, 44 E. Ave., Ste. 202, Austin, Texas 78701

Deadline: Annual Report of Unexpended Contributions due January 15, 2009 for Candidates and Officeholders

Guadalupe A. Gonzalez, 2111 Dorado Dr., Mission, Texas 78573-8590

Rick W. Neudorff, 2307 Bengal Ln., Plano, Texas 75023-7703

Deadline: Semiannual Report due January 15, 2009 for Candidates and Officeholders

Anette J. Carlisle, 1216 S. Lamar St., Amarillo, Texas 79102-1321

David M. Davenport, 8701 W. Parmer Ln. Apt. 11323, Austin, Texas 78729-4958

Harold V. Dutton Jr., 4001 Jewett St., Houston, Texas 77026-5544

Randy Frazier, 2450 Louisiana St., Ste. 400-514, Houston, Texas 77006-2380

John B. Gordon, 1007 Green Meadow Dr., Round Rock, Texas 78664-3102

Lehman Jeremiah Harris, 519 E. Interstate 30 #715, Rockwall, Texas 75087-5408

Jeff Humber, 1721 High Ridge Rd., Benbrook, Texas 76126-2907

Abel C. Limas, 974 E. Harrison St., Brownsville, Texas 78520-7123

Juan J. Maldonado, 105 E. Expy 83, Ste. F, Pharr, Texas 78577-6560

David H. Melasky, 2777 Allen Pkwy, Ste. 1000, Houston, Texas 77019-2165

Borris Lee Miles, 5302 Almeda Rd., Houston, Texas 77004-7440

Richard A. Olivo, 421A Executive Center Blvd., El Paso, Texas 79902-1003

David C. Rankin, 3111 Skyline Dr., Nacogdoches, Texas 75965-3169

Ronald E. Reynolds, 6565 W. Loop S., Ste. 115, Bellaire, Texas 77401-3505

Felix Saldivar Jr., 3160 N. Lee Trevino Dr., Ste. 110A, El Paso, Texas 79936-2061

Jim Sharp, P.O. Box 2611, Houston, Texas 77252-2611

Vernard G. Solomon, 103 E. Houston St., Marshall, Texas 75670-4143

Kathryn A. Ward, 1517 Tampico Dr., Plano, Texas 75075-2223

Jimmy P. Wrotenbery, 2300 Mimosa Dr., Houston, Texas 77019

Jorge Borunda Zaragoza, 1049 W. 16th St., Houston, Texas 77008-3427

Deadline: Semiannual Report due January 15, 2009 for Political Action Committees

Dwayne E. Adams, Bexar County Democratic Party (CEC), 3010 N. Saint Marys St., Ste. 1101, San Antonio, Texas 78212

James W. Blair, Lancaster Police Officer's Association, 3817 Regent St., Midlothian, Texas 76065

Russell L. Burnett, Automobile Insurance Agents of Texas PAC, P.O. Box 428, Lake Jackson, Texas 77566-0428

Noel Candelaria, Ysleta Educators PAC, 10935 Ben Crenshaw Dr., Ste. 210, El Paso, Texas 79935-3039

Roger Chan, Small Business PAC, 5207 Backtrail Dr., Austin, Texas 78731-2668

Chelsea R. Chapman, Houston Area Conservatives, 705 Main St., Ste. 303, Houston, Texas 77002

Lawrence Collins, Texas Motion Picture Alliance PAC, 919 Congress Ave., Ste. 1100, Austin, Texas 78701-2179

Marcia M. Gilbert, Rockwall Republican Executive Committee General Purpose PAC (CEC), P.O. Box 863, Rockwall, Texas 75087-0863

Albert Alex Gonzalez, Travis County Republican National Hispanic Assembly, 14606 Gold Fish Pond Ave., Austin, Texas 78728

Carolyn Gregory-Barclay, Canyon Lake Republican Women PAC, 1034 Island View, Canyon Lake, Texas 78133-5121

James B. Hotze, Texas Conservative PAC, 5000 Terminal St., Bellaire, Texas 77401

June Perdue Jenkins, Texas Democratic Women of Collin County, 5421 Palace Dr., Richardson, Texas 75082

Phyllis London, Delta County Republican Women, 10 County Road 3060, Cooper, Texas 75432

Sarah W. Pribyl, Victoria Federation of Teachers Committee on Political Education, 1007 E. Airline Rd., Ste. C, Victoria, Texas 77901-4013

Heather Ramon-Ayala, Texans for Local Control, 3822 Blue Oak Pass, San Antonio, Texas 78223

R. Yvonne Scherz, Katy Republican Women, 2123 FM 1960 Rd. W. #108, Houston, Texas 77090

Richard W. Snyder, Heart Place PAC, 14800 Landmark Blvd., Ste. 700, Dallas, Texas 75254-7010

Bruce A. Tankleff, Texas Democratic Women of Montgomery County PAC, 15 Gillium Bluff Pl., The Woodlands, Texas 77382-1622

William D. Taylor, BoerneForward, 603 Live Oak St., Boerne, Texas 78006

Deborah D. Tucker, Texans Against Gun Violence Political Victory Fund, 4612 Shoal Creek Blvd., Austin, Texas 78756-2915

Samuel Wesley, P.O.W.E.R. PAC, 3602 S. Macgregor Way, Houston, Texas 77021-1504

Deadline: Lobby Activities Report due October 10, 2008

William J. Stevens, 1801 Lavaca, Ste. 5L, Austin, Texas 78701

Deadline: Lobby Activities Report due December 10, 2008

Kym Nicole Olson, 1001 Louisiana St., Houston, Texas 77002

Linda S. Sickels, 2525 N. Stemmons Fwy., Dallas, Texas 75207

Deadline: Lobby Activities Report due January 12, 2009

Joseph W. Bishop, 1122 Colorado St., Ste. 320, Austin, Texas 78701

George 'Hank' Clements, 5907 Hillcrest Ave., Dallas, Texas 75205

Don Comedy, 837 Los Escondidos, Marble Falls, Texas 78654

Robert K. Feather, 801 Seventh Ave., Fort Worth, Texas 76104

Anthony Haley, 919 Congress Ave., Ste. 1130, Austin, Texas 78701

Frank Jackson, 701 Brazos #500, Austin, Texas 78701

Marc A. Levin, 900 Congress Ave., Ste. 400, Austin, Texas 78701

Evelyn W. Njuguna, 1821 Rutherford Lane, Ste. 400, Austin, Texas 78754

James F. Shearer, 1122 Colorado St., Ste. 320, Austin, Texas 78701

Linda S. Sickels, 2525 N. Stemmons Fwy., Dallas, Texas 75207

G. Gail Watkins, 1301 McKinney, Ste. 5100, Houston, Texas 77010

Larry F. York, 816 Congress Ave., Ste. 1670, Austin, Texas 78701

TRD-200900954

David Reisman

Executive Director

Texas Ethics Commission

Filed: March 5, 2009



Texas Forensic Science Commission

Notice of Major Consulting Services Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forensic Science Commission (TFSC) and Sam Houston State University have entered into a contract, dated March 1, 2009, with Dr. Craig Beyler for purposes of delivering an expert review of two Texas fire incidents to begin March 1, 2009 and end on June 1, 2009. The total amount of the project shall not exceed \$33,600.

Dr. Beyler's investigation will include but not be limited to the following:

A. Conduct an independent evaluation of the origin and spread of each fire, using current and appropriate fire analysis theory and methodology as well as proper scientific method.

B. Evaluate the origin of each fire using appropriate fire analysis theory and methodology, ensuring the proper scientific method was employed.

C. Evaluate the fire investigation and analyses previously performed in response to both fires and determine the following:

(1) whether prior investigations correctly determined the fire origin and spread of each fire;

(2) whether prior investigations and analyses were performed based on the correct scientific information and fire technology available at the time such investigations and analyses were made; and

(3) whether the professional who conducted the prior investigations and analyses were appropriately trained in the then-current scientific information and fire technology available at the time of their investigations.

D. Evaluate the trial testimony of fire experts and investigators who testified at the trials on each fire, including evaluating whether the opin-

ions offered by such experts and investigators were in accordance with the then-current scientific information and fire technology available to them at the time.

E. Determine if, based on current scientific information and fire technology analysis available, the fire investigation analysis performed in each case was conducted to the appropriate level expected of trained individuals at this time.

F. Determine whether the fire investigation analysis performed in each case was conducted to the appropriate level of trained professionals as what was generally accepted fire science on or about the date of each incident.

G. Include in the review whether there were valid determinations of the fire origin and spread. Further, determine if the State Fire Marshal and other investigators provided testimony which was in accordance with what would be expected of a fire expert employing the scientific method at that time.

H. Review the trial testimony of fire experts and investigators and deliver an opinion as to their validity both at the time of testimony as well as at the current time, considering recent developments in fire science and literature.

I. Compare the fire literature and practical theory that was available at the time of each incident versus post fire incident fire science and technology. It is requested that you render opinions regarding whether or not a retrospective examination could have been examined conducted in a timely manner.

J. Deliver an opinion as to the quality and scientific expression of the available data to include examination of fire investigative reports, scene photos, fire evidence collection techniques and interpretation of investigative findings.

K. Conduct an examination of the autopsy reports.

L. If any significant analyses were flawed or testimony was given that was incorrect or misleading of scientific relevance it is requested that these issues be included in your expert report. Determination of negligence or professional misconduct is the limitation of TFSC's duties under Texas law.

M. It is requested that recommendations for the future be provided in your report to TFSC. Any recommendation may include preventive actions to be taken by forensic scientists who perform arson analyses.

N. In the initial development of conclusions, if any additional documentation is required or has been deemed not available, Consultant will indicate how that may or may not alter the outcome of the assessment.

The purpose of this engagement is to investigate the two incidents, provide an interpretation, and advise the TFSC in the development of recommendations to the Texas Fire Marshal's Office.

Dr. Beyler's business address is as follows:

Hughes & Associates, Inc.

3610 Commerce Drive, Suite 817

Baltimore, Maryland 21227

Parties interested in more information regarding the Contract shall contact the Texas Forensic Science Commission at:

Leigh M. Tomlin

Sam Houston State University

College of Criminal Justice

Texas Forensic Science Commission

Box 2296
816 17th Street
Huntsville, Texas 77341
Phone: 1-888-296-4232
Fax: 1-888-305-2432
E-mail: info@fsc.state.tx.us
TRD-200900935
Fernando Gomez
Legal Counsel, Texas State University System
Texas Forensic Science Commission
Filed: March 4, 2009

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective April 1, 2009.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for services provided by:

Physicians and Certain Other Practitioners

Providers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

Early and Periodic, Screening and Diagnosis and Treatment (EPSDT)

Family Planning

The proposed amendments are estimated to result in additional annual aggregate expenditures of \$150,115 for the remainder of the federal fiscal year (FFY) 2009, with approximately \$89,228 in federal funds and \$60,887 in state general revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is \$321,536 with approximately \$188,838 in federal funds and \$132,698 in GR. For FFY 2011, the estimated additional aggregate expenditure is \$374,126 with approximately \$220,585 in federal funds and \$153,541 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200901015
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 10, 2009

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request to amend the Medically Dependent Children Program (MDCP) waiver.

The MDCP is a Medicaid home and community based service waiver authorized under the authority of Title XIX, §1915(c), of the Social Security Act. The current 1915(c) waiver is approved from September 1, 2007, to August 31, 2012.

The MDCP waiver provides support to families and primary caregivers of individuals under age 21, who wish to move from a nursing facility to the community or to remain in the community. MDCP strives to support inclusion of children with disabilities in a cost-effective manner through a process that does not supplant the family role and to support permanency planning for all program participants. MDCP services include respite, adaptive aids, adjunct support services, financial management services, minor home modifications and transition assistance services. Effective February 1, 2009, MDCP expanded the Consumer Directed Services option to include Registered Nurses and Licensed Vocational Nurses as providers of respite and adjunct support services.

Because Registered Nurse (RN) and Licensed Vocational Nurse (LVN) services will be available through the CDS option, they no longer need to be independently contracted. This amendment will remove RNs and LVNs as independently contracted providers of respite and adjunct support services.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2009, through August 31, 2012. This amendment maintains cost neutrality of service costs for federal fiscal years 2009 through 2012.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, telephone (512) 491-1152, fax (512) 491-1953, or e-mail christine.longoria@hhsc.state.tx.us.

TRD-200901019
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 10, 2009

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Department of State Health Services

Designation of The Med Clinic as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: The Med Clinic, 3705-9th Avenue, Port Arthur, Texas 77642. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center - MC 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200901002

Lisa Hernandez
General Counsel
Department of State Health Services
Filed: March 10, 2009

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	Lumar Imaging Inc.	L06203	Houston	00	02/17/09
Throughout Tx	Pioneer Wireline Services, L.L.C.	L06220	Graham	00	02/17/09
Throughout Tx	All-Terra Materials Testing Inc.	L06215	Houston	00	02/19/09
Throughout Tx	Qisi Inc. dba Quality Inspection Services	L06219	La Porte	00	02/19/09
Throughout Tx	The Lane Construction Corporation	L06218	Roanoke	00	02/19/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	Texas Oncology, P.A. dba Texas Cancer Center Abilene	L05127	Abilene	13	02/24/09
Andrews	Andrews County Hospital District dba Permian Regional Medical Center	L03158	Andrews	25	02/20/09
Angleton	Isotherapeutics Group, L.L.C.	L05969	Angleton	10	02/25/09
Austin	Texas Oncology, P.A.	L05108	Austin	20	02/18/09
Austin	Austin White Lime Company	L02941	Austin	10	02/22/09
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	88	02/24/09
Bryan	St. Joseph Regional Health Center	L00573	Bryan	72	02/23/09
Burnet	Daughters of Charity Health Services of Austin dba Seton Highland Lakes	L03515	Burnet	37	02/19/09
Commerce	Texas A & M University - Commerce	L00604	Commerce	41	02/11/09
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	181	02/19/09
Dallas	Physician Reliance Network dba Texas Cancer Center at Medical City Dallas	L05534	Dallas	11	02/23/09
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	62	02/23/09
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	63	02/25/09
Denton	Trace Life Sciences Inc.	L05435	Denton	21	02/24/09
El Paso	Tenet Hospitals Ltd. dba Sierra Providence East Medical Center	L06152	El Paso	05	02/11/09
El Paso	Center for Integrative Cancer Medicine, P.A.	L05880	El Paso	04	02/11/09
El Paso	The University of Texas at El Paso	L00159	El Paso	59	02/18/09
Farmers Branch	Gemclear, L.P.	L06189	Farmers Branch	03	02/17/09
Ft Worth	Weatherford International Inc.	L00747	Ft Worth	83	02/19/09
Ft Worth	Kanti C. Gandhi, M.D.	L05756	Ft Worth	04	02/20/09
Galveston	The University of Texas Medical Branch	L01299	Galveston	80	02/23/09
Houston	Cypress Cardiology, P.A.	L04353	Houston	21	02/13/09
Houston	Mallinckrodt Medical Inc.	L03008	Houston	79	02/17/09
Houston	Sheikh Ejaz Ahmed, M.D.	L06021	Houston	01	02/20/09
Houston	M. Basith Baig, M.D. P.A.	L05666	Houston	05	02/23/09
Houston	Memorial MRI and Diagnostic L.L.C. dba Memorial Nuclear Imaging L.P.	L05997	Houston	08	02/19/09
Houston	Hotwell U.S. Ltd.	L06145	Houston	03	02/23/09
Houston	Petnet Houston, L.L.C. dba Petnet Houston, L.L.C.	L05542	Houston	22	02/24/09
Houston	Memorial Hermann Hospital System dba River Oaks Imaging and Diagnostic	L06181	Houston	02	02/27/09
Houston	Digirad Imaging Solutions Inc.	L05414	Houston	30	02/27/09

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Kingsville	Christus Spohn Health System dba Christus Spohn Hospital Kleberg	L02917	Kingsville	46	02/20/09
Longview	Good Shepherd Medical Center	L02411	Longview	81	02/20/09
Mesquite	Texas Oncology, P.A. dba Texas Cancer Center Mesquite	L05741	Mesquite	06	02/18/09
Mexia	Parkview Regional Hospital	L05144	Mexia	24	02/17/09
Odessa	Flint Hills Resources, L.P.	L00547	Odessa	45	02/18/09
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	90	02/18/09
Orange	Solvay Solexis Inc.	L03968	Orange	20	02/12/09
Pasadena	MEMC Pasadena Inc.	L05129	Pasadena	11	02/11/09
Round Rock	Daughters of Charity Health Services of Austin dba Seton Medical Center Williamson	L06128	Round Rock	05	02/24/09
San Antonio	San Antonio Heart Associates, P.A.	L04860	San Antonio	23	02/11/09
San Antonio	Methodist Healthcare System of San Antonio dba Methodist Hospital	L00594	San Antonio	253	02/13/09
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	173	02/19/09
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	254	02/24/09
Stephenville	Harris Methodist Erath County	L03097	Stephenville	32	02/19/09
Texarkana	Texarkana PET Imaging Institute, L.P.	L05495	Texarkana	09	02/11/09
Throughout Tx	J-W Wireline Company	L06132	Addison	11	02/19/09
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	201	02/18/09
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	202	02/24/09
Throughout Tx	Ramming Paving Company Ltd.	L04666	Austin	07	02/20/09
Throughout Tx	Applied Standards Inspection Inc.	L03072	Beaumont	108	02/16/09
Throughout Tx	Gulf Coast Weld Spec.	L05426	Beaumont	77	02/18/09
Throughout Tx	Gulf Coast Weld Spec.	L05426	Beaumont	78	02/17/09
Throughout Tx	Rock Engineering and Testing Laboratory Inc.	L05168	Corpus Christi	09	02/18/09
Throughout Tx	GAF Materials Corporation	L03811	Dallas	15	02/17/09
Throughout Tx	Radiation Consultants Inc.	L02179	Deer Park	39	02/19/09
Throughout Tx	IRISNDT Inc.	L04769	Deer Park	69	02/25/09
Throughout Tx	Cemex El Paso Inc.	L04021	El Paso	15	02/23/09
Throughout Tx	Fugro Consultants Inc.	L05843	Fort Worth	07	02/13/09
Throughout Tx	Permian Nondestructive Testing Inc.	L06001	Gardendale	09	02/23/09
Throughout Tx	Tolunay Wong Engineers Inc.	L04848	Houston	11	02/17/09
Throughout Tx	Q Pro Inc. dba Q Pro Technical Services	L05980	Houston	06	02/18/09
Throughout Tx	Express Energy Services	L06111	Houston	02	02/18/09
Throughout Tx	All-Terra Materials Testing Inc.	L06215	Houston	01	02/19/09
Throughout Tx	Metco	L03018	Houston	196	02/23/09
Throughout Tx	A & R Engineering and Testing Inc.	L05318	Houston	06	02/24/09
Throughout Tx	Oceaneering International Inc.	L04463	Ingleside	66	02/18/09
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	251	02/18/09
Throughout Tx	T. C. Inspection Inc.	L05833	Oyster Creek	35	02/11/09
Throughout Tx	T. C. Inspection Inc.	L05833	Oyster Creek	36	02/25/09
Throughout Tx	Techcorr U.S.A., L.L.C.	L05972	Pasadena	59	02/18/09
Throughout Tx	Conam Inspection & Engineering Inc.	L05010	Pasadena	163	02/18/09
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Pasadena	96	02/19/09
Throughout Tx	Techcorr U.S.A., L.L.C.	L05972	Pasadena	60	02/23/09
Throughout Tx	Alcoa World Alumina Atlantic	L05186	Point Comfort	09	02/17/09
Throughout Tx	Arias & Associates Inc.	L04964	San Antonio	33	02/17/09
Throughout Tx	Cardinal Health	L02033	San Antonio	102	02/25/09
Throughout Tx	Ludlum Measurements Inc.	L01963	Sweetwater	84	02/24/09
Tomball	Clinic for Cardiovascular Care, P.A. dba Cardiovascular Clinic of Texas	L05670	Tomball	07	02/24/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	68	02/23/09
Throughout Tx	3M Company	L00918	Brownwood	41	02/12/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Felipe Rios, M.D. dba Felipe Rios, M.D. and Associates P.A.	L05700	Houston	04	02/17/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

[graphic]

TRD-200900996

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: March 9, 2009

Texas Department of Housing and Community Affairs

Request for Proposals for Temporary Housing for Rapid Deployment in Response to Disasters Contingency Contract

Summary. The Texas Department of Housing and Community Affairs (TDHCA) announces an Request for Proposals (RFP) for Temporary Housing for Rapid Deployment in Response to Disasters.

Deadline For Submission. The deadline for submission in response to the RFP is 5:00 p.m., Central Daylight Saving Time, Friday, May 1, 2009. No proposal received after the deadline will be considered. No incomplete, unsigned, or late proposals will be accepted after the proposal deadline, unless TDHCA determines, in its sole discretion, that it is in the best interest of TDHCA to do so.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execu-

tion of a contract and is subject to availability of funds. Issuance of this RFP in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Individuals or firms interested in submitting a proposal should visit our website at <http://www.tdhca.state.tx.us/cdbg/index.htm>, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to TDHCA in writing to Julie Dumbleck (julie.dumbleck@tdhca.state.tx.us).

Place and Method of Proposal Delivery. Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Mailing Address:

P.O. Box 13941

Austin, TX 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3800

TRD-200900950

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 5, 2009

◆ ◆ ◆
Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council solicits proposals from qualified organizations to provide summer jobs for youth. A proposal package will be available for download at www.h-gac.com or www.wrksolutions.com beginning at 12:00 noon Central Standard Time on Friday, March 6, 2009. Hard copies of the proposal package will also be available at that time.

A bidder's conference is scheduled for Thursday, March 12, 2009 starting at 10:00 am at the Doubletree Post Oak Hotel, 2001 Post Oak Blvd., 2nd floor - San Felipe Room, Houston, Texas. Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Friday, March 27, 2009. Mailed proposals must be postmarked no later than Wednesday, March 25, 2009. H-GAC will not accept late proposals; we will make no exceptions.

Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200900955

Jack Steele

Executive Director

Houston-Galveston Area Council

Filed: March 5, 2009

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 1186 "Happy Holidays!"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1186 is "HAPPY HOLIDAYS!" The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1186 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1186.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, SNOWFLAKE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1186 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
SNOWFLAKE SYMBOL	SNOW
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1186), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1186-0000001-001.

K. Pack - A pack of "HAPPY HOLIDAYS!" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the

last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HAPPY HOLIDAYS!" Instant Game No. 1186 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HAPPY HOLIDAYS!" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "SNOWFLAKE" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
- B. No duplicate non-winning prize symbols on a ticket.
- C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- D. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- E. The "SNOWFLAKE" (doubler) play symbol will only appear on winning tickets as dictated by the prize structure.
- F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).
- G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HAPPY HOLIDAYS!" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HAPPY HOLIDAYS!" Instant Game prize of \$1,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HAPPY HOLIDAYS!" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HAPPY HOLIDAYS!" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HAPPY HOLIDAYS!" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1186. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1186 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,040,000	11.54
\$2	1,040,000	11.54
\$4	300,000	40.00
\$5	80,000	150.00
\$10	80,000	150.00
\$20	35,000	342.86
\$40	19,500	615.38
\$100	1,000	12,000.00
\$1,000	100	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.62. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1186 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1186, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900937

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 5, 2009



Instant Game Number 1188 "Stocking Stuffer"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1188 is "STOCKING STUFFER". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1188 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1188.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A1, A2, A3, A4, A5, A6, B1, B2, B3, B4, B5, B6, C1, C2, C3, C4, C5, C6, D1, D2, D3, D4, D5, D6, E1, E2, E3, E4, E5, E6, F1, F2, F3, F4, F5 and F6.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1188 - 1.2D

PLAY SYMBOL	CAPTION
A1	
A2	
A3	
A4	
A5	
A6	
B1	
B2	
B3	
B4	
B5	
B6	
C1	
C2	
C3	
C4	
C5	
C6	
D1	
D2	
D3	
D4	
D5	
D6	
E1	
E2	
E3	
E4	
E5	
E6	
F1	
F2	
F3	
F4	
F5	
F6	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$60.00, \$75.00, \$100, \$150 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1188), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1188-0000001-001.

K. Pack - A pack of "STOCKING STUFFER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STOCKING STUFFER" Instant Game No. 1188 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STOCKING STUFFER" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) play symbols. The player scratches the "STOCKING GRID COORDINATES". The player then scratches ONLY the boxes on STOCKING GRID whose letters and numbers match the "STOCKING GRID COORDINATES". The player reveals 3 matching symbols to win according to prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 48 (forty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. A ticket may win up to four (4) times per the prize structure.

C. No duplicate STOCKING GRID COORDINATES play symbols on a ticket.

D. No grid will be used consecutively.

E. No four matching grid symbols will match a winning STOCKING GRID symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "STOCKING STUFFER" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$40.00, \$50.00, \$60.00, \$75.00, \$100, \$150 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any

Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$60.00, \$75.00, \$100, \$150 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STOCKING STUFFER" Instant Game prize of \$3,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STOCKING STUFFER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
 2. delinquent in making child support payments administered or collected by the Attorney General; or
 3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
 4. in default on a loan made under Chapter 52, Education Code; or
 5. in default on a loan guaranteed under Chapter 57, Education Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "STOCKING STUFFER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "STOCKING STUFFER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1188. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1188 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	576,000	10.42
\$5	624,000	9.62
\$10	192,000	31.25
\$15	96,000	62.50
\$20	48,000	125.00
\$30	15,000	400.00
\$40	10,000	600.00
\$50	7,500	800.00
\$60	6,250	960.00
\$75	3,750	1,600.00
\$100	2,450	2,448.98
\$150	1,000	6,000.00
\$300	500	12,000.00
\$3,000	25	240,000.00
\$35,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1188 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1188, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900957

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: March 6, 2009



Instant Game Number 1189 "Winter Winnings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1189 is "WINTER WINNINGS". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1189 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1189.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, SLEIGH SYMBOL, TREE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1189 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
SLEIGH SYMBOL	SLEIGH
TREE SYMBOL	WIN ALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1189), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1189-0000001-001.

K. Pack - A pack of "WINTER WINNINGS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINTER WINNINGS" Instant Game No. 1189 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WINTER WINNINGS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "SLEIGH" play symbol, the player wins PRIZE shown for that symbol instantly. If a player reveals a "TREE" symbol, the player wins ALL 20 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "SLEIGH" (auto win) play symbol will never appear more than once on a ticket.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. When the "TREE" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching any WINNING NUMBER play symbol.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINTER WINNINGS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WINTER WINNINGS" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and

present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINTER WINNINGS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WINTER WINNINGS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WINTER WINNINGS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1189. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1189 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	660,800	10.71
\$10	708,000	10.00
\$15	236,000	30.00
\$20	141,600	50.00
\$50	88,500	80.00
\$100	14,868	476.19
\$500	1,475	4,800.00
\$1,000	236	30,000.00
\$5,000	16	442,500.00
\$50,000	7	1,011,428.57

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1189 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1189, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900938

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 5, 2009



Instant Game Number 1190 "Merry Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1190 is "MERRY MONEY". The play style is "key number match with doublers".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1190 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1190.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$5,000 and \$50,000.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1190 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELVN
12	TWLV
13	TRTN
14	FRTN
15	FFTN
16	SXTN
17	SVTN
18	EGTN
19	NITN
20	TWTY
21	TWON
22	TWTW
23	TWTR
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	THTY
31	THON
32	THTW
33	THTR
34	THFR
35	THFV
36	THSX
37	THSV
38	THET
39	THNI
40	FRTY
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY

\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1190), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1190-0000001-001.

K. Pack - A pack of "MERRY MONEY" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MERRY MONEY" Instant Game No. 1190 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MERRY MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 34 (thirty-four) Play Symbols. If a player matches any of YOUR ORNAMENTS play symbols to one of the WINNING ORNAMENTS play symbols in the large circle, the player wins PRIZE shown below that WINNING ORNAMENT. If the player matches any of YOUR ORNAMENTS play symbols to one of the DOUBLER ORNAMENTS play symbols, the player wins DOUBLE the PRIZE shown below that DOUBLER ORNAMENT. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 34 (thirty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 34 (thirty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 34 (thirty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 34 (thirty -four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

C. No more than three matching non-winning prize symbols.

D. No duplicate YOUR ORNAMENTS play symbols on a ticket.

E. No duplicate non-winning WINNING ORNAMENTS and/or DOUBLER ORNAMENTS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

G. No prize amount in a non-winning location will correspond with the WINNING ORNAMENTS or DOUBLER ORNAMENTS play symbol (i.e. \$5 and 5).

H. On tickets winning four (4) or more times, each YOUR ORNAMENTS number will be used to create a winning match.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MONEY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MERRY MONEY" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal

Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MERRY MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MERRY MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MERRY MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1190. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1190 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	420,000	12.00
\$10	504,000	10.00
\$15	134,400	37.50
\$20	117,600	42.86
\$50	66,822	75.42
\$100	12,180	413.79
\$500	1,008	5,000.00
\$1,000	189	26,666.67
\$5,000	25	201,600.00
\$50,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.01. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1190 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1190, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900958

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 6, 2009



Instant Game Number 1193 "Merry Millionaire"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1193 is "MERRY MILLIONAIRE". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1193 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1193.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, GIFT SYMBOL, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$ONE MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1193 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STAR SYMBOL	STAR
GIFT SYMBOL	WINX10
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND

\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00 \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1193), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1193-0000001-001.

K. Pack - A pack of "MERRY MILLIONAIRE" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MERRY MILLIONAIRE" Instant Game No. 1193 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MERRY MILLIONAIRE" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "STAR" play symbol, the player wins the PRIZE shown for that symbol instantly. If a player reveals a "GIFT" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 55 (fifty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS play symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 20 and \$20).

E. Non-winning prize symbols will not match winning prize symbols on a ticket.

F. No more than five matching non-winning prize symbols on a ticket.

G. The "STAR" (auto win) play symbol may only appear once on a ticket.

H. The "GIFT" (win x 10) play symbol will only appear on winning tickets as dictated by the prize structure.

I. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MILLIONAIRE" Instant Game prize of \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MERRY MILLIONAIRE" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the

bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MERRY MILLIONAIRE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MERRY MILLIONAIRE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MERRY MILLIONAIRE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled

to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 2,040,000 tickets in the Instant Game No. 1193. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1193 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	244,800	8.33
\$25	204,000	10.00
\$50	122,400	16.67
\$75	40,800	50.00
\$100	41,327	49.36
\$200	17,000	120.00
\$500	1,143	1,784.78
\$1,000	118	17,288.14
\$10,000	20	102,000.00
\$1,000,000	3	680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.04. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1193 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1193, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200900939

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 5, 2009

North Central Texas Council of Governments

Request for Proposals for the Job Access/Reverse Commute and New Freedom Vehicle Procurement

This request by the North Central Texas Council of Governments (NCTCOG) for VENDOR services is filed under the provisions of Texas Government Code, Chapter 2254.

NCTCOG is requesting sealed written proposals from qualified VENDOR(s) to design, manufacture, and deliver quality transit vehicles to support transportation services related to the Job Access/Reverse Commute (49 U.S.C. §5316) and New Freedom (49 U.S.C. §5317) federal

grant programs. NCTCOG is requesting sealed written proposals from VENDOR(s) in the following three (3) categories:

Two (2) - Type III, lift-equipped ADA accessible Transit Buses;

Three (3) - Type III, lift-equipped ADA accessible Multifunction School Activity Buses; and

Ten (10) - Type VII, lowered floor ADA accessible Mini-vans.

NCTCOG may award the contract to a single VENDOR or make multiple awards. Copies of the Request for Proposals (RFP) will be available beginning Friday, March 20, 2009.

Vehicles must meet all requirements related to NCTCOG, Federal Transit Administration (FTA), U.S. Department of Transportation (US DOT), and the National Highway Traffic Safety Administration (NHTSA). The VENDOR(s) must also be licensed to sell the type of vehicle(s) proposed in the State of Texas.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, April 17, 2009, to James Powell, Transportation Planner III, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The VENDOR(s) selected to design, manufacture, and deliver the vehicles will be recommended by a VENDOR Selection Committee (VSC). The VSC will use evaluation criteria and methodology consistent with the scope of work contained in the RFP. The NCTCOG Executive Board will review the VSC's recommendations and, if found acceptable, will issue a contract(s) for award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code §2000d to §2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200901047

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 11, 2009

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 3, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to its State-

Issued Certificate of Franchise Authority, Project Number 36766 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Iowa Park and Mobile City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36766.

TRD-200900969

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 6, 2009

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 4, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36772 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Hallettsville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36772.

TRD-200901006

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 10, 2009

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 6, 2009, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Proton Energy, Inc. for Retail Electric Provider Certification, Docket Number 36776 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-

782-8477 no later than March 27, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36776.

TRD-200901009

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2009



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 4, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of TalkSpan Inc. for a Service Provider Certificate of Operating Authority, Docket Number 36770 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 Kbps, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 25, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36770.

TRD-200901007

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2009



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 4, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Auric Marketing LLC for a Service Provider Certificate of Operating Authority, Docket Number 36771 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private line, Switch 56 Kbps, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company d/b/a AT&T Texas, Verizon Communications, and Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at

1-888-782-8477 no later than March 25, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36771.

TRD-200901008

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2009



Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on February 27, 2009, with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 36757.

The Application: Mid-Plains is a hybrid cooperative and provides local exchange and interexchange service in the state of Texas under the same certificate of convenience and necessity (CCN). Mid-Plains offers nationwide calling plans where the customers receive either limited or unlimited intrastate and interstate minutes for a flat monthly fee. Since the customers pay for their toll usage in advance as a flat fee and not based on actual usage, the cooperative cannot calculate monthly intrastate revenues from the calling plans based on actual intrastate telecommunications services receipts as required by P.U.C. Substantive Rule §26.420(f)(3). Mid-Plains requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Mid-Plains to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by March 27, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36757.

TRD-200900968

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2009



Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on March 2, 2009, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 36760.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Hector Gonzales, Superintendent of Schools for Brownsville Independent School District, requesting BPUB to provide electric utility service to a proposed high school, middle school and elementary school located on 123.7 acres of land. The estimated cost to BPUB to provide service to this proposed area is \$245,701.00. The area is presently undeveloped.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than March 27, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36760.

TRD-200900952

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 5, 2009



Notice of Application to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line in Polk County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 6, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Polk County, Texas.

Docket Style and Number: Application of East Texas Electric Cooperative, Inc to Amend its Certificate of Convenience and Necessity (CCN) for a Proposed Lake Livingston to Rich 138-kV Transmission Line in Polk County, Docket Number 36677.

The Application: The application of East Texas Electric Cooperative, Inc. (ETEC) to amend a CCN for a proposed 138-kV transmission line in Polk County, Texas. The proposed project is designated as the Lake Livingston Hydro 138-kV Single Circuit Transmission Line Project. The proposed project is needed to interconnect a proposed 24 megawatt hydroelectric generating facility to the transmission grid. The proposed transmission line will be approximately 2.8 miles long. The estimated date to energize facilities is June 2012. The total estimated cost of this transmission project is approximately \$1,450,400.00.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is April 20, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 36677.

TRD-200901049

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 11, 2009



Notice of Application to Amend Certificate of Convenience and Necessity for a Proposed Transmission Line in Upton, Crockett, and Pecos Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on February 27, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Upton, Crockett, and Pecos Counties, Texas.

Docket Style and Number: Application of LCRA Transmission Services Company to Amend a Certificate of Convenience and Necessity for the North McCamey to McCamey B 138-kV Transmission Line within Upton, Crockett, and Pecos Counties. Docket Number 36686.

The Application: The project is designated the North McCamey to McCamey B 138-kV CREZ Transmission Line Project in Upton, Crockett, and Pecos Counties. This project adds a second 138-kV circuit to existing double circuit capable structures between LCRA TSC's existing North McCamey Substation and to the future location of the new McCamey B Substation. The new McCamey B substation will be located under the existing transmission line, approximately 15 miles south of the North McCamey Substation. The addition of the second circuit between the North McCamey and McCamey B substation is one of several projects intended to allow for reliable and cost-effective delivery of power produced from wind generators located in areas of West Texas and the Panhandle called Competitive Renewable Energy Zones (CREZ) to load centers throughout the state. The estimated cost of this transmission project is \$10,541,000. The estimated date to energize facilities is December 15, 2010.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is April 13, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36686.

TRD-200900951

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 5, 2009



Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas (commission) on March 6, 2009.

Docket Style and Number: Petition of East Texas Electric Cooperative, Inc. for Declaratory Ruling and Brief in Support of Petition, Docket Number 36782.

The Application: The issue presented for the commission is whether East Texas Electric Cooperative, Inc (ETEC) is required to submit an application to amend its certificate of convenience and necessity (CCN) Number 30190 based on: (1) Section 37.051(c) of the Public Utility Regulatory Act (PURA) and (2) the Federal Energy Regulatory Commission's (FERC) plenary and preemptive jurisdiction under the Federal Power Act (FPA) to license hydroelectric projects, including the primary transmission lines therefrom. ETEC requests a declaratory order stating ETEC is not required to seek an amendment to its existing CCN with respect to the proposed Lake Livingston Hydroelectric Project primary interconnecting transmission line.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Customer Protection Division at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 36782.

TRD-200901045

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 11, 2009



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, April 9, 2009, at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the March 20th out of cycle 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed March 20th out of cycle 2009 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the March 20th out of cycle 2009 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Wednesday, April 8, 2009, or

they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, May 4, 2009, at 4:00 p.m.

TRD-200901010

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 10, 2009



Public Notice for Trinity Parkway in Dallas County - Availability of Supplemental Draft Environmental Impact Statement and Draft Section 4(f) Evaluation; Notice of Public Hearing

Pursuant to 43 Texas Administrative Code §2.5(e)(5), the Texas Department of Transportation (department) is advising the public of the availability of the approved Supplemental Draft Environmental Impact Statement (SDEIS) and Draft Section 4(f) Evaluation for the proposed Trinity Parkway toll facility in the City of Dallas, Dallas County, Texas. As currently proposed, the northern terminus is located at the Interstate Highway (IH) 35E interchange with State Highway (SH) 183 and extends to the southern terminus at the United States Highway (US) 175 interchange with SH 310 for a distance of approximately nine miles. The proposed project is being developed jointly by the Federal Highway Administration (FHWA), the department, and the North Texas Tollway Authority (NTTA).

The purpose of the proposed Trinity Parkway is to manage traffic congestion on IH 35E, IH 30, and other major transportation facilities on the west and south sides of downtown Dallas. The proposed project is designed to improve mobility and safety, and to increase accessibility to businesses and public facilities. The proposed Trinity Parkway project involves the staged construction of a six-lane controlled access toll facility with local street interchanges, and freeway-to-freeway interchanges at IH 35E/SH 183, US 175/SH 310, Woodall Rodgers Freeway, and IH 45. The proposed facility would be grade separated at crossings of existing highways and local arterial streets. The number and configuration of interchanges, ramps, auxiliary lanes, and frontage road improvements vary among the Build Alternatives considered.

The No-Build Alternative (Alternative 1) and eight Build Alternatives (Alternatives 2A, 2B, 3A, 3B, 3C, 4A, 4B and 5) are evaluated in the SDEIS and Draft Section 4(f) Evaluation. Each Build alternative is approximately nine miles long, and begins at IH 35E/SH 183 and ends at US 175/SH 310. Alternatives 2A and 2B generally follow existing Irving/Industrial Boulevard. Alternatives 3A, 3B, 3C, 4A, 4B and 5 generally follow along the east and/or west Dallas Floodway levees. Each Build Alternative encroaches upon floodplains and waters of the U.S., including wetlands, within the project study area, to varying degrees. The proposed right-of-way width would vary depending on the need for ramps, and other geometric considerations for each of the Build Alternatives. Right-of-way requirements for the Build Alternatives range from approximately 264 to 490 acres. Potential displacements for the Build Alternatives vary from 6 to 20 single-family residences and from 24 to 272 commercial building displacements.

The Trinity Parkway SDEIS and Draft Section 4(f) Evaluation examines the social, economic, and environmental impacts of the six-lane ultimate configuration. The SDEIS and Draft Section 4(f) Evaluation were prepared by the department, FHWA, and NTTA in cooperation with the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to provide new or additional information and data analysis performed since the publication of the Draft Environmental Impact Statement (DEIS) in February 2005. The Draft Section 4(f) Evaluation has been prepared due to the proposed project's potential impacts to historic sites that are either listed or have been determined eligible for listing on the National Register of Historic Places.

The SDEIS and Draft Section 4(f) Evaluation may be obtained on the NTTA homepage via the Internet at www.ntta.org. Select 'NTTA Project Updates' on the NTTA homepage, and then click on 'Trinity Parkway' (<http://www.ntta.org/AboutUs/Projects/Trinity-Parkway.htm>).

Copies of the SDEIS and Draft Section 4(f) Evaluation are also available for review in hard copy and/or CD-ROM format at the following locations: J. Erik Jonsson Central Library, 1515 Young Street, Dallas, Texas 75201; Martin L. King Jr. Branch Library, 2922 Martin Luther King Jr. Boulevard, Dallas, Texas 75215; Dallas West Branch Library, 2332 Singleton Boulevard, Dallas, Texas 75212; North Oak Cliff Branch Library, 302 W. Tenth Street, Dallas, Texas 75208; Oak Lawn Branch Library, 4100 Cedar Springs Road, Dallas, Texas 75219; Pleasant Grove Branch Library, 1125 S. Buckner Boulevard, Dallas, Texas 75217; Dallas Regional Chamber, 700 N. Pearl Street, Suite 1200, Dallas, Texas 75201; Oak Cliff Chamber of Commerce, 400 S. Zang Boulevard, Suite 110, Dallas, Texas 75208; West Dallas Chamber of Commerce, 2424 N. Westmoreland Road, Dallas, Texas 75212; Dallas Black Chamber of Commerce, 2838 Martin Luther King Jr. Boulevard, Dallas, Texas 75215; Greater Dallas Hispanic Chamber of Commerce, 4622 Maple Avenue, Suite 207, Dallas, Texas 75219; Greater Dallas Asian American Chamber of Commerce, 11171 Harry Hines Boulevard, Suite 115, Dallas, Texas 75229; Downtown Dallas, 2200 Ross Avenue, Suite 4600E, Dallas, Texas 75201; West Dallas Multipurpose Center, 2828 Fish Trap Road, Dallas, Texas 75212; New Hope Baptist Church, 5002 S. Central Expressway, Dallas, Texas 75215; and St. Philips Neighborhood Development Corporation, 1622 Panama Place, Dallas, Texas 75215. Copies of the SDEIS and Draft Section 4(f) Evaluation (both electronic and paper) may be requested online at trinity-parkway@ntta.org or by mail. Written requests should be submitted to Attn: Corridor Manager, NTTA, 5900 West Plano Parkway, Plano, Texas 75093. Copies are available for \$300.00 plus shipping and handling, and a CD-ROM of the document in Adobe Acrobat format is available for \$5.00 plus shipping and handling.

Conceptual schematic drawings and the SDEIS and Draft Section 4(f) Evaluation have been placed on file for public inspection and review

at the following agency locations: City of Dallas, 1500 Marilla Street, Room 6BS, Dallas, Texas 75201; Dallas County, 411 Elm Street, 4th Floor, Dallas, Texas 75202; NTTA Offices, 5900 West Plano Parkway, Suite 100, Plano, Texas 75093; Texas Department of Transportation Dallas District Library, 4777 East Highway 80, Mesquite, Texas 75150; and North Central Texas Council of Governments Headquarters, Center Point Two, 2nd Floor, 616 Six Flags Drive, Arlington, Texas 76011.

The NTTA, in cooperation with the department, will conduct a formal public hearing on Tuesday, May 5, 2009, at 7:00 p.m., at the Dallas Convention Center Arena, located at 650 South Griffin Street, Dallas, Texas 75202, to discuss the proposed Trinity Parkway project. The purpose of the public hearing is to inform and solicit comments from the public on the schematics for the proposed project alternatives and the SDEIS and Draft Section 4(f) Evaluation for the proposed tolled facility. The public hearing will include a formal presentation that summarizes the project alternatives presented in the SDEIS and their associated comparative impacts. An open house will be held from 4:00 p.m. to 7:00 p.m. prior to the public hearing at the same location to allow for questions and review of project exhibits with NTTA and department staff. Information concerning NTTA's Relocation and Assistance Program, as well as information about a tentative schedule for right-of-way acquisition and construction, will be discussed at the public hearing.

Persons requiring special communication or accommodation needs are encouraged to contact NTTA at (972) 628-3163 or by email at trinity-parkway@ntta.org at least three (3) working days prior to the public hearing so that appropriate arrangements can be made. Because the public hearing will be conducted in English, any request for language interpreters or other special communication needs should also be made at least three (3) working days prior to the hearing. NTTA will make all reasonable efforts to accommodate these needs.

Comments regarding the SDEIS and Draft Section 4(f) Evaluation can be mailed to Attn: Corridor Manager, Re: Trinity Parkway Project, NTTA, 5900 West Plano Parkway, Plano, Texas 75093. Comments will also be accepted by email at trinityparkway@ntta.org. All comments must be received or postmarked on or before Friday, May 15, 2009 to be included in the public record.

TRD-200901038

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: March 11, 2009



Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in a variety of intellectual property matters related to patent, trademark and copyright preparation/prosecution, licensing, opinion work, and litigation support. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on matters related to the protection of the department's intellectual property. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is responsible for planning, designing, constructing, operating, and maintaining the state's transportation system. The department continues to develop patentable machines and processes as well as trademarks, service marks, trade secrets, slogans, and copyrighted materials in the course

of performing its statutory duties. The department intends to engage outside counsel to advise and represent the agency on matters related to its intellectual property, including, but not limited to, securing state and federal certifications, patents, and registrations, protecting the department's property rights while registrations are pending, and advising or assisting with any matter directly related to securing registration and international protection of the department's interest in its intellectual property when appropriate. With respect to intellectual property and patent/trademark/copyright issues, outside counsel, in consultation with department staff, will prepare all legal documents required by the U.S. Patent and Trademark Office, the Texas Secretary of State's Office, international registration authorities or other governmental entities, and render opinions on the legality of pending, existing, or proposed patents, trademarks, or copyrighted materials. In addition, counsel shall perform other legal services that do not come within the function of registration or certification, but are necessary for the implementation and administration of the department's intellectual property, such as advising the department on potential claims against other parties or defending the department in relation to its intellectual property. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, federal, state, and international patent, trademark, and copyright law.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 20, 2009.

TRD-200901011

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 10, 2009



Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) with respect to the issuance of bonds. The legal services provided will include the customary and necessary services of a bond counsel, and may include the customary and necessary services of a disclosure counsel, in connection with the issuance, sale, and delivery of bonds, notes, and other public securities (bonds) on which the interest may be excludable from gross income under existing federal tax law. Firms responding must demonstrate a history of providing expert bond counsel services and advice for governmental agencies, with particular emphasis on experience with the financing of transportation projects. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The commission has the authority under various statutes to operate several bond programs. As such, the commission and the department will need the services of outside counsel with respect to the issuance of bonds under one or more of the following programs: Transportation Code, Chapter 227, for the development of facilities and systems on the Trans-Texas Corridor; Transportation Code, Chapter 91, for the development of state-owned rail facilities; Transportation Code, §222.003, which authorizes the issuance of bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund, the proceeds of which can be used to fund state highway improvement projects; Transportation Code, Chapter 228, for the development of toll projects on the state highway system; Transportation Code, Chapter 201, Subchapter M, which authorizes the issuance of bonds, notes, and other public securities secured by money in the Texas Mobility Fund, the proceeds of which can be used to fund state highway improvement projects, publicly owned toll roads, and other public transportation projects; Transportation Code, §201.115, which authorizes the commission and the department to issue notes or borrow money from any source to carry out the functions of the department; Transportation Code, Chapter 222, Subchapter D, which authorizes the commission to issue bonds to provide money for the capitalization of the State Infrastructure Bank; Transportation Code, §222.035, which requires the department to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state; Transportation Code, Chapter 431, under which the commission may authorize the creation of a corporation to issue bonds on its behalf; and Transportation Code, Chapter 201, Subchapter

O, which authorizes the issuance of obligations secured by money in the Texas Rail Relocation and Improvement Fund, the proceeds of which can be used to pay the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities.

Scope of Services: The legal services to be provided by outside counsel may include, but are not limited to, the following tasks:

A. For new issues of bonds, outside counsel will:

(1) Prepare or assist in preparing all orders, agreements, and other instruments pursuant to which bonds will be authorized, secured, sold, and delivered in consultation with the commission and the department, the financial advisor, underwriters and their counsel, and other consultants;

(2) Provide recommendations on the marketing of bonds, including by negotiated sale and/or sale by competitive bids, methods for enhancing the rating, advice on bond covenants, pledge of revenues, flow of funds, legal coverage requirements, and the timing of the issue;

(3) Provide legal advice and assistance on state law, federal tax law, and federal securities law requirements of various financing structures (alternatives), the principal amount of bonds to be sold, maturity schedules, bases of awarding bids, and types of sales;

(4) Represent the commission and the department in the preparation of any contract that provides for the sale of bonds, ensuring that all participants, including underwriters and investment banking firm(s) retained by, or contracting with, the commission and the department, disclose all conflicts of interest;

(5) Request and obtain approval of the issuance of bonds from the Office of the Attorney General and obtain the registration of the bonds or other obligations by the Comptroller of Public Accounts of the State of Texas;

(6) Assist in making presentations and required submissions and obtaining approval of the Bond Review Board, the Legislative Budget Board, and any other State entity with supervisory powers over the issuance of bonds by the commission;

(7) Attend meetings of the commission, Bond Review Board, legislative committees, or other meetings to the extent required or requested;

(8) Attend all document sessions;

(9) Assist in presentations to the major rating agencies, credit enhancers, or prospective purchasers of bonds to the extent requested;

(10) Render a legal opinion concerning the validity and binding nature of the bonds and the security for the bonds under Texas law, the tax-exempt status of the interest thereon under federal income tax laws (if the bonds are to be tax-exempt), and the status of the bonds under federal securities law;

(11) Prepare or review any IRS filings required by federal tax law;

(12) Render written opinions of bond counsel pertaining to investment earnings and any amounts required to be rebated to the United States as excess arbitrage earnings, if any, and any other written opinions of counsel that may be required under the terms of the order authorizing the issuance of bonds or other obligations or under the Internal Revenue Code, as amended;

(13) Prepare or assist in the preparation of the Preliminary Official Statement, the Final Official Statement, or the Offering Memorandum, as applicable, for each sale, including review of the information therein describing the bonds and the financing documents, the security for the bonds and the federal income tax status thereof, and render the cus-

tomary opinion with respect to that information. If requested, outside counsel will also render the customary disclosure counsel opinion;

(14) Prepare certain certificates and review such other documents as are customary and necessary in order to structure and issue bonds;

(15) Provide advice and counsel on continuing compliance with laws applicable to the issuance of bonds, including ongoing disclosure obligations;

(16) Supervise the printing, if any, execution, and delivery of the bonds to the purchasers, and the printing and binding of the bond transcripts and, if requested, the Offering Memorandum or the Preliminary Official Statement and the Final Official Statement;

(17) After issuance, interpret bond provisions and covenants when requested; and

(18) Provide legal support for all other matters necessary or incidental to the issuance of the bonds or other obligations.

B. Outside counsel will advise the commission and the department on the legality of proposed debt restructuring techniques.

C. Outside counsel will advise the commission and the department on legal ramifications and constraints of proposed investment transactions and the development of investment contracts and investment policies.

D. Outside counsel will advise the department on federal tax laws, especially those pertaining to federal arbitrage/rebate tax laws. It will, if requested, review and "sign off" on all calculations and methodologies undertaken by department staff and outside specialists.

E. In response to real or anticipated changes in state and federal law, regulation, or public policy, outside counsel will advise the commission and the department of the impact on bond issues and investment policy. Outside counsel shall review legislation, recommend legislative action where appropriate, and assist with drafting of legislation at both the federal and state level.

F. Outside counsel will assist in the solicitation and evaluation of proposals for public/private development of transportation projects under comprehensive development agreements and review the proposed financing plans. Outside counsel will report on the conformance of the plans with federal and state securities laws. Outside counsel will assist with the writing of all other legal documents and public notices relating to a comprehensive development agreement, and assist with writing and filing all legal documents required of a public/private partnership financing by all jurisdictional governmental entities.

G. Outside counsel will assist in reviewing and commenting on agreements with the Federal Highway Administration and with political subdivisions relating to the financing of projects.

H. Outside counsel will assist in writing, issuing, soliciting, and evaluating Requests for Proposals for underwriting services, and prepare recommendations on retention of underwriters and underwriting teams.

I. Outside counsel will provide information on questions and issues posed by the commission and the department on an ad hoc basis.

Form of Response: Responses to this Request for Proposals (RFP) should include at least the following information:

A. Provide a brief history and general description of the firm, including the number of years the firm has been active in rendering bond opinions for governmental issuers. Describe how the firm is organized and how its resources will be put to work for the commission and the department. Include information relative to the capabilities and resources of its Texas offices and a listing of its Texas office resident personnel by discipline that would be assigned to department projects. Provide a synopsis of the firm's experience in providing bond counsel and dis-

closure counsel services to governmental issuers of tax-exempt revenue bonds, with particular attention being given to transportation project financings.

B. Qualifications.

(1) List the governmental issues for which the firm served as lead bond counsel, co-bond counsel, disclosure counsel, underwriters' counsel, or special tax counsel in the past five years. Include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Indicate any issues for transportation projects. Specify for each issue the involvement, if any, of the attorneys who may be assigned to department projects. Tabular format is acceptable.

(2) Select **one** transaction from the above list of governmental issues that best demonstrates the firm's ability to serve the commission and the department and describe in detail the legal issues involved in the transaction and the firm's approach to the analysis. (Two page limit.)

(3) Describe any innovations the firm has developed or worked on for tax-exempt security issues, briefly describing the problem, the solution, and the results.

(4) Outline the firm's experience during the past two years with the major rating agencies and note its potential applicability to the commission and the department.

(5) Describe the firm's expertise and experience in assisting public finance clients in creating new financing programs.

(6) Describe the firm's capabilities in assisting public finance clients in complying with arbitrage regulations and other tax-related requirements. Include a brief description of the firm's experience in securing private letter rulings or other rulings (other than extensions of time or other procedural matters) from the Internal Revenue Service on behalf of any public finance clients, including a representative description of the types of rulings.

(7) Describe the firm's experience with bond enhancement agreements and derivative products in bond transactions.

C. Provide resumes for those individuals who would be assigned to work on department projects, including years of bond counsel experience and number and type of bond issues. Specify who would be assigned as the primary day-to-day contact.

D. Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services generally and bond matters in particular.

E. Identify each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address any conflicts of interest.

F. Confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Information submitted in response to this RFP shall not be released by the department during the proposal evaluation process or prior to contract execution. Following execution of a contract, all proposals and the information contained therein may be subject to public disclosure under the Texas Public Information Act.

Term of the Agreement: It is anticipated that the initial contract term will be for the period of September 1, 2009 through August 31, 2010, renewable at the department's option for an additional twelve months. However, the department reserves the right to shorten the term of the

agreement or to make other modifications to the contract as may be required by the Office of the Attorney General. The department retains the right to terminate the contract, for any reason, subject to prior written notice. In the event of termination, outside counsel will be paid for all services completed to the effective date of termination plus any necessary services to effectively conclude and transfer ongoing work.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. Proposals should be limited to a maximum of 50 pages, including tables, resumes, and other attachments. The proposal must be executed by a duly authorized representative of the law firm. All proposals become the property of the department. The proposal should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker in the Office of General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation, at the address stated previously, no later than 5:00 p.m. on April 20, 2009. The department has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the department to do so.

Any proposal may be modified or withdrawn, even after the proposal is received by the department, at any time prior to the proposal due date. No material changes will be allowed following the proposal due date; however, non-substantive corrections or deletions may be made with the approval of the department.

Basis of Selection: The department will make its selection based on an evaluation of the firm's demonstrated qualifications, expertise, experience, and competence in providing bond counsel and disclosure counsel services and advice to governmental agencies, particularly with respect to transportation projects, the expertise of the attorneys that will be assigned to work on such matters, and the capabilities and resources of the firm's offices. Additionally, the department may, at its option, conduct interviews as part of the selection process. Evaluation criteria may include the following:

A. The completeness and thoroughness of a firm's response relative to information requested in the RFP;

B. The extent and depth of the firm's qualifications, expertise, experience, reputation, and record of success in providing bond counsel and disclosure counsel services to governmental entities issuing tax exempt bonds, particularly with respect to transportation projects, including the size and number of prior bond issues and experience in complex bond financings;

C. The extent and depth of the qualifications, experience, reputation, and record of success of the attorneys that will be assigned to provide outside counsel services, particularly with respect to transportation projects; and

D. The extent to which the firm is organizationally structured to carry out the responsibilities potentially assigned to it and the effectiveness of the resources that will be assigned to the department.

Fees may not be considered and may not be indicated in responses to this RFP. The department will attempt to negotiate a contract at a fair and reasonable price with the firm(s) deemed to be the most highly

qualified. If a satisfactory contract cannot be negotiated, the department reserves the right to proceed with another firm.

Issuance of this RFP in no way constitutes a commitment by the department to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. All costs directly or indirectly related to preparation of a response to this RFP, or any oral presentation or supplement that may be required by the department, shall be borne by the responding firm.

TRD-200901012

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 10, 2009



Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in environmental law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on matters related to compliance with environmental laws, regulations and rules, both state and federal, affecting the department. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is responsible for planning, designing, constructing, operating, and maintaining the state's transportation system. In connection with these responsibilities, the department must deal with various environmental matters. These matters include, but are not limited to, the following: satisfying environmental review requirements under the National Environmental Policy Act and similar state law; obtaining appropriate permits; answering queries and complaints from state and federal regulatory authorities; complying with environmental laws, rules, and regulations, both state and federal, on an ongoing basis; appearing before administrative and judicial tribunals, both state and federal, to answer charges of a civil and criminal nature, both state and federal; and generally complying with state and federal laws, rules, and regulations applicable to the responsibilities discharged by a state department of transportation. The department intends to engage outside counsel to represent the agency in these matters. In particular, the department intends to rely on outside counsel to represent the department in criminal cases related to these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, these subjects. The firm should be experienced in the matter of criminal defense work involving alleged violations of both state and federal environmental laws, rules, and regulations.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encour-

age and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available on request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 20, 2009.

TRD-200901013

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 10, 2009



Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters relating to the acquisition, lease, maintenance, construction, operation, and management of railroad lines and other rail facilities, including, but not limited to, abandoned railroad lines and acquisition of rail corridors and railroad rights of way for rail, highway, or other transportation facilities. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency that is obligated by state law to consider the advisability of acquiring rail lines that have been

proposed for abandonment or discontinuance of service or taking other action necessary to provide for continued rail or other transportation uses over the rail lines. Additionally, the department regularly considers acquiring rail corridors, rail facilities, and railroad rights of way for rail, highway, or other transportation projects. The department is authorized under state law to acquire, finance, construct, maintain, and operate a passenger or freight rail facility, individually or as one or more systems. The department intends to engage outside counsel to advise and represent the agency on matters relating to the acquisition, lease, maintenance, construction, operation, and management of railroads and other rail facilities, including trackage rights and service issues, and the acquisition of rail corridors, rail facilities, and railroad rights of way. Outside counsel will provide legal advice concerning the department's rights and obligations with respect to a rail carrier's abandonment of or discontinuance of service on a rail line, including requirements relating to interim trail use, rail banking, and termination of trail use under 16 U.S.C. §1247(d) and implementing regulations, as well as the handling of claims resulting from rail banking and termination of trail use. Outside counsel will also be expected to advise and perform work for the department generally regarding the department's responsibilities under applicable federal and state laws relative to rail and rail transportation, including reviewing legislation and administrative rules when requested by the department. Outside counsel will represent the department in any necessary proceeding before the Surface Transportation Board and in negotiations with rail operators, construction companies, financial institutions, maintenance companies, and lessees as well as advise the department and the Transportation Division of the Office of Attorney General on matters relating to proceedings before the Federal Court of Claims. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Outside counsel engaged by the department must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices that might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosure of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available on request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 inch by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on April 20, 2009.

TRD-200901014

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 10, 2009

Prairie View A&M University

Amendment to Major Consulting Contract

Prairie View A&M University ("University") has amended a contract for consulting services ("Contract") with PricewaterhouseCoopers LLP ("Consultant") as an extension of original services more particularly described in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1306).

Project Description:

Additional services to be provided by the selected Consultant will analyze various positions in the College of Agriculture and Human Sciences and make recommendations for position titling and salary ranges.

Name and Address of Consultant:

PricewaterhouseCoopers LLP

125 High Street

Boston, MA 02110-1707

Total Value of Contract:

Fee for the original contract was \$371,700

Fee for the amended contract is \$162,000

Contract Dates:

The Contract Amendment was executed on March 3, 2009. Services are expected to be complete in six to eight weeks. However, the contract will remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to the Consultant.

Dates on which Documents, Films, Recordings, or Reports that Consultant is Required to Present are Due:

Upon completion of project, the Consultant will provide the reports to document the methodology, findings and recommendations.

TRD-200900940
W. Kay Peavy
Manager of Procurement and Contracts
Prairie View A&M University
Filed: March 5, 2009

◆ ◆ ◆
The University of Texas System

Award of Consultant Contract Notification

The University of Texas Health Science Center at Houston ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (the "Contract") with Gravelle Branding/Marketing ("Consultant") as more particularly described in the IFO 744-8015- MARKETING AND BRANDING (the "Invitation"), published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6243).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with an institutional marketing and branding initiative.

Name and Address of Consultant:

Gravelle Marketing/Branding
David Gravelle
4509 Livingston Ave.
Highland Park, Texas 75205

Total Value of the Contract:

The total value of this contract will not exceed \$129,300.

Contract Dates:

The Contract was executed by Consultant on March 4, 2009, and by University on March 5, 2009 and dated effective March 6, 2009.

Due Dates for Contract Products:

The Marketing and Branding Initiative shall be completed and delivered to University no later than July 6, 2009 at 5:00 p.m. CST.

The term of the Contract shall terminate on July 6, 2009.

TRD-200900956
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: March 5, 2009

◆ ◆ ◆
Texas Water Development Board

Request for Statement of Qualifications

The Sabine - Neches Bay/Basin Expert Science Team (BBEST) requests the submission of Statements of Qualifications (SOQs) from interested applicants leading to the possible award of one or more contracts for state fiscal year 2009 to support the Sabine - Neches BBEST. Work will include manipulation of historical flow data from selected gauges using MS Excel, and use of one or more of the

programs discussed in "Use of Hydrologic Data in the Development of Instream Flow Recommendations for the Environmental Flows Allocation Process" that includes a section on HEFR (BBEST ID #36) to analyze various conditions at selected control points as outlined by BBEST for the Sabine and Neches Rivers. Work will also include utilizing the WRAP computer program to analyze water availability at selected control points on the Sabine and Neches Rivers under conditions outlined by the BBEST. Attendance at BBEST monthly meetings should be anticipated. Reports on work progress and draft results shall be distributed to BBEST members electronically for their use and review between meetings. The total amount of the initial contract(s) awarded shall not exceed \$75,000.

Statements of Qualifications shall be limited to 15 pages or less not including resumes of proposed team members. Statements of Qualifications will be accepted until 12:00 p.m.; March 26, 2009 by David Carter, Agency Contract Administrator, Texas Water Development Board 1700 N. Congress Avenue, Austin, Texas 78711 - Room 535. Statements of Qualifications will then be scored by BBEST to rank the submittals. Interviews of up to the top three ranked teams submitting their qualifications may be requested. At the discretion of BBEST a selection may be made based on the submittals without conducting presentations or interviews. The goal of BBEST is to have a firm under contract to perform this work by April 15, 2009.

"Use of Hydrologic Data in the Development of Instream Flow Recommendations for the Environmental Flows Allocation Process" that includes a section on HEFR (BBEST ID #36) may be found in the BBEST Library at <http://www.sratx.org/BBEST/Library.html>.

Scoring of the submittals will be in five areas:

1. Availability to perform the services requested in a timely manner. The BBEST schedule is time critical. This work will need to be completed by August 7, 2009 to meet the BBEST schedule.
2. Experience using the WRAP and the programs described by "Use of Hydrologic Data in the Development of Instream Flow Recommendations for the Environmental Flows Allocation Process" that includes a section on HEFR (BBEST ID #36) preferably in the Sabine and Neches River Basins.
3. Experience in performing work under contract to the Texas Water Development Board, Texas Commission on Environmental Quality, and or Texas Parks and Wildlife Department.
4. Familiarity with the Sabine and Neches River Basins and the data available for those basins used by the computer models selected and under consideration.
5. Ability to clearly convey graphically, in writing and orally the results of the requested work. This will be scored on the basis of reference statements.

Questions may be addressed to: Gary C. Graham, P.E., (512) 633-3912, ggraham@ge-walker.com

TRD-200900995
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: March 9, 2009

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).